

CHAPTER 6: TRIAL, ADJUDICATION, AND DISPOSITION

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TRIAL, ADJUDICATION, AND DISPOSITION

Where the case will be heard

A youth's case most likely will be heard in juvenile court. However, there is one situation that would cause a youth's case to be tried in adult court:

- a youth is accused of murder; and
- a youth is 14 or older.¹

Youthful offender cases

While every other juvenile case is heard in juvenile court, there are circumstances where a juvenile can receive an adult prison sentence. These are called youthful offender cases.² A youth must be:

- age 14 or older and accused of a crime involving the threat or infliction of serious bodily harm; or
- age 14 or older and charged with a gun case; or
- age 14 or older, previously committed to DYS and charged with a felony.³

Trial

In most juvenile court cases, the general public is not permitted in the courtroom during a youth's trial.⁴ The youth has the right to be considered innocent until proven delinquent (akin to guilty in the adult system). The youth also has the right, under state law, to trial by a jury of six.⁵ This means that he can choose whether he wants a group of six community members to decide the case or whether he would prefer that the judge hear the case and make the decision.

If the case goes to trial and the allegations are proved beyond a reasonable doubt, the judge will enter a finding that the youth is "delinquent." If the allegations are not proven beyond a reasonable double, the judge will enter a finding of "not delinquent" and the youth will be released.

After the trial, the case goes to the disposition phase, discussed below.

Delinquency determination

A delinquency determination, whether the result of a trial or plea bargain, will be part of the youth's juvenile record.⁶ This record, in many cases, will follow him for the rest of his life.

Despite popular belief, juvenile records in Massachusetts are not automatically "sealed" or "expunged" when a juvenile reaches adulthood.⁷ In Massachusetts, there is no law providing for juvenile records to be expunged. However, juvenile records can be sealed three years after the completion of the sentence in the matter to be sealed.⁸ If they are sealed, the record of the delinquency may be reported only to certain individuals.⁹ For example, judges hearing subsequent criminal cases against a youth may review sealed juvenile records when deciding upon a sentence.¹⁰

Accepting a plea bargain

Instead of going to trial, a youth may accept a plea bargain. In this context, there are two pleas in Massachusetts: delinquent and admission to sufficient facts.¹¹ (This admission is not actually an admission, but an agreement not to contest the facts before the judge and that those facts are sufficient to find the youth delinquent.) When a youth accepts a plea bargain, he gives up the right to contest the charges or have a jury trial. The case then moves straight to the disposition phase.

Sentencing/disposition


After a trial or plea bargain, the judge will determine the sentence/disposition -- the final outcome of a case in the juvenile justice system. In this phase, the judge determines whether the youth will spend time in confinement or remain in the community.

The possible dispositions that a judge can order are listed in a table at the end of this section in order of increasing restrictiveness.

In Massachusetts, the judge plays a limited role in the sentencing process. The judge does not determine length of commitment to DYS or the place of commitment. DYS makes those decisions. (The processes by which those decisions are made are discussed in later sections of this book.)

The lawyer’s role during the sentencing/disposition phase


Generally, the prosecutor, the probation officer and the youth’s lawyer will all make presentations regarding the disposition. It’s the job of the youth’s lawyer to present the youth’s position.

 **Tip for families:** It is important that you provide information to your child’s defense lawyer so that the lawyer may prepare for the disposition phase. In this phase, your child’s lawyer will seek to provide the court with a full picture of your child and his needs. Give the lawyer relevant information that you have. You also should give the lawyer contact information for and information from individuals who have worked with your child, such as a school counselor, pastor or minister, pediatrician, or therapist. In some cases, the judge may order a youth to undergo a “15(e)” psychological or psychiatric evaluation in order to help the judge decide the disposition.¹² If you think such an evaluation would be worthwhile, talk to your child’s lawyer about this issue as well.

Pursuing appropriate services for youth with mental health or substance abuse treatment needs

For youth with mental health or substance abuse treatment needs, the sentencing phase is particularly critical. It is a key point at which a youth can try to access appropriate mental health and substance abuse services.

In some cases, the judge may order the juvenile to undergo a psychological or psychiatric evaluation to help the judge decide upon the disposition.¹³ For further discussion of 68A evaluations, see the chapter entitled “After the Arrest.”

 **Tip for families:** If your child has mental health or substance abuse treatment needs, it is important for you and your child’s lawyer to think about how to achieve a disposition that will allow for these needs to be addressed. Once you have done so, your child’s lawyer may want to try to educate the judge about the benefits of a certain disposition.

Pursuing community-based services for youth with mental health needs


There is a growing consensus among mental health clinicians that community and home-based services that wrap around the youth are usually more effective than facility-based treatment in addressing mental health problems and rehabilitating youth.¹⁴

Such services include Multi-Systemic Therapy (MST), Multi-Dimensional Treatment Foster Care, Functional Family Therapy, and Wrap Around services.¹⁵

The argument for pursuing community-based services for a youth with mental health needs may be particularly compelling if a youth has Medicaid and lives in one of the communities listed below. These communities have special initiatives designed to help youth at risk of out-of-home mental health placement remain in the home.

- Worcester (Worcester Communities of Care and Coordinated Family-Focused Care)
- South Central Worcester County (Central Massachusetts Communities of Care)
- Brockton (Coordinated Family-Focused Care)
- Lawrence (Coordinated Family-Focused Care)
- New Bedford (Coordinated Family-Focused Care)
- Springfield (Coordinated Family-Focused Care)
- Cambridge (Mental Health Services Program for Youth)
- Everett (Mental Health Services Program for Youth)
- Malden (Mental Health Services Program for Youth)
- Medford (Mental Health Services Program for Youth)
- Somerville (Mental Health Services Program for Youth)


These initiatives are described in the Resource Guide at the end of this book.

 **Tip for families:** Ask your child's lawyer to evaluate the availability and appropriateness of a disposition that allows for the implementation of home-based mental health services. If your child has Medicaid and lives in one of the above communities with a pilot program, ask the lawyer if such a program would be an option.

Juvenile record

By definition, most juvenile proceedings are considered civil, not criminal. However, often the impact of a juvenile record is the same as an adult criminal record.

For example, juveniles found delinquent of certain sex crimes are required to register with the sex offender registry,¹⁶ and face the possibility of commitment as sexually dangerous persons.¹⁷ Many delinquencies will affect one's ability to get or keep a driver's license. A juvenile record has implications for individuals seeking to join the military. A juvenile record also may have immigration consequences. And, while some employers will not see a juvenile record, many employers are entitled to see it.¹⁸ Further, a juvenile record may affect a youth in a wide range of other areas, from college admission to obtaining a mortgage to pursuing certain professions.

 **Tip for families:** Therefore, it's critical that you and your child discuss with your child's lawyer, while preparing the case, the effect of the outcome on the child's juvenile record.

Probation


A youth's disposition (final outcome of the case) could be probation, a court-ordered status of supervision in the community.¹⁹ Probation is the most common disposition for court-involved youth.

If a youth is placed on probation, the probation officer will complete a report, based on interviews with the youth, as well as with his parent or legal guardian.²⁰ This report includes a detailed profile of the youth, including a risk/need classification that is then used to develop supervision plans.²¹

The risk/need assessment measures nine "risk categories" including: prior delinquency record, prior periods of probation, age at first offense, school discipline problems within the past year, changes in residence within the past year, response to caretaker discipline, peer relationships, substance use and attitude.²²

If a youth is put on probation and not committed, there will be conditions of probation.²³ Examples of such conditions include not getting re-arrested, going to school (or work) daily and on time, obeying residential rules, reporting to a probation officer or program, paying money (if the youth stole or damaged property) and following the conditions of a curfew.


If the youth makes it through his probation period without violating any probation rules, his case will be closed.

 **Tip for families:** If any of your child's proposed conditions of probation would be difficult to satisfy, you should tell your child's lawyer since a violation of probation conditions is a frequent cause of commitment. For example, if a proposed condition is regular school attendance and your child has a history of truancy, it is important to tell the lawyer so that that condition can be modified or other conditions can be substituted for it, if possible.

Probation surrender

However, if the youth's probation officer thinks the youth has broken a rule or rules, the officer will send the youth a letter called a "surrender notice" requiring him to come to court for a hearing.²⁴

When the youth arrives at court, he will be appointed a lawyer.²⁵ Depending on the court, this may or may not be the same lawyer that represented the youth on the charge that led to probation.

 **Tip for families:** If your child liked his original lawyer and wants him or her reappointed for this hearing, he should: 1) let the original lawyer know about the surrender notice and the hearing date; and 2) ask the judge to have the same lawyer reappointed -- citing trust, communication, and knowledge of the child's unique circumstances.

After the hearing, if the judge finds that the youth has broken a rule, the judge may give him more probation time, make his probation rules more strict, or commit him to DYS.²⁶

Table of potential dispositions

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
Adjudicated not delinquent	The court has found that the youth has not committed or is not responsible for alleged act. The youth will face no punishment for the charge.	
Dismissed with prejudice or dismissed without prejudice	When the prosecutor and the court have agreed not to proceed in the case. When a case is dismissed with prejudice, the youth will face no punishment for the charge.	When a case is dismissed without prejudice, it doesn't necessarily mean that the youth will not face any punishment.
Pretrial probation ²⁷	The case is continued for some period, usually with the agreement that if the youth behaves well, the case will be dismissed.	This doesn't mean there won't be a trial -- the youth hasn't given up the right to a trial.

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
<p>Continued without a finding (“CWOFF”)²⁸</p>	<p>The youth has been placed on probation. He has given up his right to go to trial. If he successfully completes probation, his case will be dismissed. The youth also will be required to pay a victim witness fee, as well as a fee for probation services. Some of these fees may be satisfied if the youth completes community service hours.</p> <p>A youth who successfully completes a CWOFF does not technically have a juvenile record, because the case was dismissed, but does have a record of contact with the juvenile court.</p> <p>If the youth violates the terms of his probation, he can be sent to DYS.</p>	<p>This does not mean that the youth is completely free – he must comply with the terms of his probation. He may have to attend school, meet a curfew, or get a job, for example. Also, because a CWOFF involves an admission, it could have potential implications for military service or immigration status (although a CWOFF doesn't result in a record of conviction/adjudication).</p>

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
Delinquent probation ²⁹	The youth has been found delinquent (guilty) and a judge may sentence him to probation. If he violates the terms of his probation, there will be a probation surrender hearing and the judge can change the disposition. The youth also will be required to pay a victim witness fee, as well as a fee for probation services. Some of these fees may be satisfied if the youth completes community service hours.	This does not mean that the youth is completely free – he must comply with the terms of his probation. He may have to attend school, meet a curfew or get a job, for example. Also, because this outcome is the result of an adjudication, it results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.
Delinquent with a suspended commitment to DYS ³⁰	The youth is found delinquent and is committed to DYS, but, instead of being placed in DYS custody, the youth is placed on probation. If the youth doesn't follow the probation rules, he will be committed to DYS. The youth also will be required to pay a victim witness fee, as well as a fee for probation services. Some of these fees may be satisfied if the youth completes community service hours.	This does not mean that the youth is completely free – he must comply with the terms of his probation and if he doesn't he will be committed to DYS. Also, because this outcome is the result of an adjudication, it results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
Committed to the Department of Youth Services, but not adjudicated as a youthful offender ³¹	The youth will be placed in DYS custody until his 18 th birthday. The youth will spend between 30 and 45 days in a DYS residential facility for assessment. After that point, he may remain confined by DYS for treatment. At some point, he may be able to live with you, while remaining under DYS supervision. Typically, all fees and fines are waived if the youth is committed.	This does not mean that the youth will necessarily live away from home until he is 18. Also, this outcome results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.
Adjudicated a Youthful Offender ³²	The youth will be committed to DYS custody until age 21 and/or will serve an adult sentence and/or will be placed on juvenile or adult probation. The youth could spend time in a DYS facility and also have adult probation (which, if violated, would result in the youth being transferred to an adult facility). Typically, all fees and fines are waived if the youth is committed.	This does not mean that the youth will necessarily be placed in adult prison before age 21, although it is possible. In any event, a youth cannot be placed in adult prison until he turns 17. Also, this outcome results in a record (although it is unclear if it is considered a juvenile record or an adult record) that may have implications in a number of areas, including military service, immigration status, employment, and housing.

Endnotes

- 1 Mass. Gen. L. ch. 119, §§ 74, 72B.
- 2 Mass. Gen. L. ch. 119, § 58.
- 3 Mass. Gen. L. ch. 119, §§ 52, 58.
- 4 Mass. Gen. L. ch. 119, § 65.
- 5 Mass. Gen. L. ch. 119, § 56(e).
- 6 “Record” is a term which is often used in a way that is confusing to parents. Some people consider the print out that is created when a child is arraigned as a record, but when employers or court officials are talking about whether someone has a record, they’re usually talking about a record of adjudication or conviction. When we use the term “juvenile record” in this booklet, we are referring to a record of adjudication or conviction.
- 7 Children’s Law Center of Massachusetts, Inc., Sealing Juvenile Records, http://www.clcm.org/community_education.htm.
- 8 Mass. Gen. L. ch. 276, § 100B. For further information, see Children’s Law Center of Massachusetts, Inc., Sealing Juvenile Records, http://www.clcm.org/community_education.htm.
- 9 Mass. Gen. L. ch. 276, § 100B.
- 10 Mass. Gen. L. ch. 276, § 100B.
- 11 Mass. Gen. L. ch. 119, § 55B.
- 12 Mass. Gen. L. ch. 123, § 15(e).
- 13 Mass. Gen. L. ch. 119, § 68A.
- 14 See, e.g., Youth Transition Funders Group, A Blueprint for Juvenile Justice Reform, 2nd ed. (2006), http://www.ytfg.org/documents/JEHT_SecondEdition.pdf; Eric Trupin, The Estimated Effect on Criminal Recidivism for Different Types of Programs for Youth and Juvenile Offenders, distributed at the National GAINS Center Co-Occurring Disorders and Justice Center teleconference (Oct. 11, 2005); Bazelon Center for Mental Health Law, The Detrimental Effects of Group Placements/Services for Youth with Behavioral Health Problems, <http://www.bazelon.org/pdf/Deviant-Peer-Influences-Fact-Sheet.pdf>; Leslie Kaufman, “A Home Remedy for Juvenile Offenders,” The New York Times (Feb. 20, 2008) (describing a new program in New York, the Juvenile Justice Initiative, that maintains medium-risk youth otherwise destined for institutionalization in the juvenile justice system in their own homes with intensive, at home therapy); Thomas Grisso, Adolescent Offenders with Mental Disorders, 18 The Future of Children 143, 152-57 (2008)
- 15 Youth Law Center, Medicaid for Youth in the Juvenile Justice System (Aug. 2006) at 4 (on file with MHLAC); see also Eric Trupin, The Estimated Effect on Criminal Recidivism for Different Types of Programs for Youth and Juvenile Offenders, GAINS Teleconference (Oct. 11, 2005) (on file with MHLAC).
- 16 Mass. Gen. L. ch. 6, § 178C
- 17 Mass. Gen. L. ch. 123A, § 1.
- 18 See Youth Advocacy Project, Consequences of Court Involvement, http://www.youthadvocacyproject.org/parents/ma_courts.htm#process.
- 19 *Commonwealth v. Sheridan*, 51 Mass. App. Ct. 74, 76 (2001) (citing *Commonwealth v. Durling*, 407 Mass. 108, 111 (1990)); Mass. Gen. L. ch. 119, § 58 (authorizing probation for juvenile offenders).
- 20 Mass. Gen. L. ch. 119, § 57.
- 21 National Center for Juvenile Justice State Profiles: Massachusetts, Probation Supervision (Jan. 13, 2006), <http://www.ncjj.org/stateprofiles/profiles/MA06.asp?print=yes&topic=Profile&state=MA06.asp>.

- 22 Office of the Commissioner of Probation, Trial Court of Massachusetts, “Juvenile Risk/Need Offender Assessment” form.
- 23 For citations and a discussion of conditions of probation, see Juvenile Defense Network Youth Advocacy Project/CPCS, “An Overview of the Law of Probation Surrenders” (May 2006).
- 24 *Morrissey v. Brewer*, 408 U.S. 471, 485-489 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); see also *Commonwealth v. Durling*, 407 Mass. 108 (1990); *Commonwealth v. Maggio*, 414 Mass. 193, 196 (1993), (citing *Morrissey and Gagnon*).
- 25 District Court Rules for Probation Violation Proceedings, R. 5(a); see also *Commonwealth v. Faulkner*, 418 Mass. 352 (1994) (probationer at probation violation hearing has right to counsel if revocation might result in imprisonment).
- 26 See *Commonwealth v. Durling*, 407 Mass. at 111-112; see also Proposed Juvenile Court Rules for Violation of Probation Proceedings R. 7 (d) (providing for the following dispositions: (a) continuance of probation, (b) termination, (c) modification, (d) revocation).
- 27 Mass. Gen. L. ch. 276, § 87.
- 28 Mass. Gen. L. ch. 119, § 58.
- 29 Mass. Gen. L. ch. 119, § 58B.
- 30 Mass. Gen. L. ch. 119, § 58.
- 31 Mass. Gen. L. ch. 119, § 58.
- 32 Mass. Gen. L. ch. 119, § 58.

