



Legal Update

August 2019

The SJC has clarified what "first offense misdemeanor" means pursuant to the amended G.L. C. 119 § 52!

Wallace W. a juvenile vs. Commonwealth, SJC No. 12663 (2019): In August 2018, the juvenile was arrested for operating a motor vehicle without a license in violation of G. L. c. 90, § 10. After the juvenile's arrest, the officer filed an application for a delinquency complaint with the Juvenile Court. The juvenile had a court history that included dismissed drug charges, a dismissed charge of operating a motor vehicle without authority, and an open case for breaking and entering in the nighttime with the intent to commit a felony. Probable cause had been found on one or more of these prior charges. A delinquency complaint on the new charge subsequently issued, and the juvenile was scheduled for arraignment.

Pursuant to G. L. c. 119, § 52, the juvenile filed a motion to dismiss before he was arraigned. The juvenile argued that he did not have any prior delinquency adjudications and that the recent charge of unlicensed operation of a motor vehicle (G. L. c. 90, § 20), is punishable by a fine and would qualify as a "first offense misdemeanor" under § 52. According to the juvenile, the Juvenile Court did not have jurisdiction over the matter. The motion to dismiss was denied and the motion judge determined that the charge of unlicensed operation of a motor vehicle charge was not the juvenile's "first offense." Previously, a clerk magistrate found probable cause on at least one of the juvenile's prior

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offenses. The juvenile was arraigned and he filed an appeal. The key issues that the SJC considered were: what qualifies as "a first offense misdemeanor" in Juvenile Court and how can a "first offense" misdemeanor be proved.

Conclusion: The SJC concluded that the amendment to § 52 under the Criminal Justice Reform Bill intended to give juveniles a second chance with regard to a first offense of a misdemeanor that carries a maximum punishment of six months' imprisonment or a fine. The Legislature intended to excuse a juvenile's first isolated instance of such misconduct by prohibiting the Juvenile Court from exercising jurisdiction over a juvenile's first offense that qualifies as such misdemeanor. However, once a juvenile has committed his or her "first offense," the Juvenile Court may exercise jurisdiction over all other offenses not excluded under § 52, including subsequent six months or less misdemeanors. The SJC also concluded that, consistent with the purpose of the statute and the rule of lenity, the term "first offense" under § 52 means a first adjudication of delinquency. The SJC implemented a process for establishing a "first offense."

1st Issue: What qualifies as a "first offense misdemeanor" under the amended § 52?

The SJC clarified that a "first offense misdemeanor" does not require the misdemeanor to be the same category of offenses. The plain language of § 52, refers to "a first offense misdemeanor" G. L. c. 119, § 52, not to a "first offense" of "every" different type of six months or less misdemeanor. See *Commonwealth v. McLeod*, 437 Mass. 286, 294 (2002). As part of its analysis, the SJC emphasized that the purpose of the juvenile justice system "is primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders, and geared toward the correction and redemption to society of delinquent children" See *Commonwealth v. Humberto H.*, 466 Mass. 562, 576 (2013). Mass. 459, 466 (2012) See *Commonwealth v. Magnus M.*, 461 ("goal of the juvenile system of justice to act in the best interests of children by encouraging and helping them to become law-abiding and productive members of society, and not to label and treat them as criminals." The rehabilitative purposes of the act recognizes the difference between an isolated act of misbehavior, for which a second chance can and should be granted, and a pattern of such misbehavior, which cannot be ignored. Allowing a juvenile to commit a first offense of every individual six months or less misdemeanor would contravene these purposes. See *Bellalta*, 481 Mass. at 378. The legislative history does not contemplate an unlimited number of such chances before the exercise of Juvenile Court jurisdiction and intervention. As the Legislature undoubtedly understood, juveniles engaging in repeated delinquent behavior should be subject to the jurisdiction of the Juvenile Court, as their

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rehabilitation and reform are critical to ensuring that they "become law-abiding and productive members of society." *Magnus M.*, 461 Mass. at 466.

The SJC also noted that the Legislature clearly eliminated all civil infractions and violations of municipal ordinances or town bylaws as predicates for delinquency adjudications. These categorical exclusions stand out in stark contrast from the single exclusion applicable to misdemeanors, which applies only to "a first offense of a misdemeanor" for which the punishment is a fine or imprisonment for six months or less. **G. L. c. 119, § 52**. The Legislature did not explicitly exclude the first offense of every misdemeanor meeting the statutory definition. See *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 324 (1988)

After reviewing § 52's exclusion of "a first offense misdemeanor" the SJC concluded that it only applies to a juvenile's first offense of a single six months or less misdemeanor meeting the statutory definition, not his or her first offense of every six months or less misdemeanor. The Legislature intended to excuse an isolated instance of more minor misdemeanor-level misconduct, not multiple misdemeanors, or a minor misdemeanor that follows more serious misconduct. It would make little sense, and indeed contravene the Legislature's intent, for a juvenile who had previously been adjudicated delinquent on one or more felonies, or one or more serious misdemeanors, to have a six months or less misdemeanor dismissed as a "first offense." *Ciani v. MacGrath*, 481 Mass. 174, 178 (2019)

2nd Issue: Under § 52, how is a "first offense" misdemeanor established?

The SJC held that since the statute pertaining to a "first offense misdemeanor is ambiguous," the rule of lenity requires that the juvenile be given "the benefit of the ambiguity". *Hanson H.*, 464 Mass. at 813. After considering the arguments that the Commonwealth and juvenile presented, the SJC determined that the term "first offense" means a first adjudication of delinquency. However, the SJC's interpretation gives the juvenile the benefit of the ambiguity, as it requires a higher showing from the Commonwealth before the Juvenile Court may exercise jurisdiction over a juvenile who has committed a six months or less misdemeanor.

Pursuant to § 52, the amendment creates an exclusion from the jurisdiction of the Juvenile Court. As there is intended to be no jurisdiction over a "first offense" of a six months or less misdemeanor for a juvenile who has not previously been adjudicated delinquent for any offense, it follows that there cannot be a final adjudication of delinquency for the first charged six months or less misdemeanor in any conventional sense, as the charge would be dismissed under § 52 before ever reaching the adjudicatory

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stage of the proceeding. Consequently, if, as the juvenile argues, a "first offense" under § 52 cannot occur unless there is a prior adjudication of delinquency, and there can never be a final adjudication over the first offense because there is no jurisdiction, the statute would, in effect, create a "Catch-22" and effectively eliminate these misdemeanors as predicates for delinquency adjudications altogether. As explained supra, this is inconsistent with both the statutory language and the legislative intent to allow the Juvenile Court to exercise jurisdiction over repeat offenders.

The SJC offered a mechanism by which a juvenile who demonstrates recurrent delinquent behavior can have his or her "first offense" of a six months or less misdemeanor established, even if it did not result in a prior adjudication of delinquency. To that end, we examine the various circumstances in which the Juvenile Court may or may not exercise jurisdiction over an application for a delinquency complaint charging a juvenile with a six months or less misdemeanor under § 52.

1. Juveniles with no prior record and a single new charge: A delinquency complaint application charging the juvenile with a single six months or less misdemeanor must be dismissed as a "first offense" under § 52.
2. Juvenile who has previously been adjudicated delinquent for any offense: The adjudications could have occurred on a felony charge, a misdemeanor with a maximum punishment of more than six months, or a misdemeanor charge with a punishment of less than six months that occurred prior to the amendment to § 52. The prior delinquency adjudications could also result from an out of State misdemeanor with six months or less misdemeanor. Under these possible scenarios, a delinquency complaint may issue charging the juvenile with a six months or less misdemeanor. The charges in this example would not be excluded under the statute because the charges would not be the juvenile's "first offense."
3. Juveniles who have not previously been adjudicated delinquent for any offense, but who may have engaged in multiple offenses.
 - a juvenile who has previously had a delinquency complaint application charging the juvenile with a six months or less misdemeanor dismissed as a "first offense" under § 52. **(NOTE: A prior dismissal on the merits cannot provide the basis for a prior adjudication of delinquency.)**

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- a juvenile accused of committing two or more six months or less misdemeanors, or a six months or less misdemeanor and a greater offense or offenses
- a juvenile who has previously had a charge of a six months or less misdemeanor or a greater offense continued without a finding; and
- a juvenile with an open case for another six months or less misdemeanor or a greater offense.

In the above scenarios, a delinquency complaint application charging the juvenile with a six months or less misdemeanor may issue upon a finding of probable cause on the charge. However, the Commonwealth must notify the clerk-magistrate prior to the issuance of the complaint that it intends to prove multiple offenses during any subsequent proceedings. If a delinquency complaint issues on the subsequent six months or less misdemeanor, the juvenile can move to dismiss the complaint prior to arraignment on the ground that the charged conduct is a “first offense,” under § 52. See *Humberto H.*, 466 Mass. at 576. A pre-arraignment evidentiary hearing shall then be ordered, and the Commonwealth would have to prove that the charge upon which the complaint has issued is not the juvenile's “first offense” under § 52. The Commonwealth must prove beyond a reasonable doubt, that the juvenile has committed a prior offense. If there is a finding beyond a reasonable doubt that the juvenile has committed a prior offense, the Commonwealth may proceed to arraignment on the charge upon which the delinquency complaint is based, as such a charge would not be the juvenile's first offense under § 52. If, the motion judge concludes that the prior offense has not been proved beyond a reasonable doubt, the complaint shall be dismissed as a “first offense” under § 52.

This procedure avoids the “Catch-22” problem that there can never be a second or subsequent offense because every offense is dismissed as a first offense. It also targets repeat juvenile offenders who engage in a pattern of misconduct, not a single isolated instance, in accordance with the Legislature's intent. It also protects the juvenile by ensuring that no complaint charging a juvenile with a six months or less misdemeanor will proceed to arraignment, and the negative consequences accompanying an arraignment will not attach, unless and until the Commonwealth has demonstrated that it is not the juvenile's “first offense” under § 52.

- ❖ **TRAINING TIP:** There were significant changes to juvenile justice after the passage of the Criminal Justice Reform Bill. One of the controversial portions of the bill concerned the delinquent child definition. The table on the next page reviews what authority police have when encountering juveniles.

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	Authority of Police Encountering Juveniles
Minimum Delinquent Age	<ul style="list-style-type: none"> • <u>Police cannot arrest, summons or charge a juvenile under the age of 12</u> for violating a bylaw, ordinance or charged any criminal law in Massachusetts. • Juvenile Court <u>still does not have jurisdiction</u> over any juvenile <u>under the age of 12</u> who commits any civil infractions or violates any municipal ordinances or town bylaws.
“First Offense” Definition clarified	<ul style="list-style-type: none"> • First offenses of a misdemeanor <u>does not</u> refer to the same category of offenses that have a punishment of six months or less. • First offense misdemeanors cannot follow prior adjudications of delinquency. • Where the juvenile’s court history includes a prior dismissal of a six-months-or-less misdemeanor; open charges of either two six-months-or-less misdemeanors or one such charge and a greater offense; a CWOFF on a six-months-or-less misdemeanor or a greater offense, or an open case for another six-months-or-less misdemeanor or a greater offense, the Commonwealth must file its intent to prove multiple offenses by proof beyond a reasonable doubt. If successful, the Commonwealth may proceed to arraignment on the delinquency complaint.
Misdemeanor offenses with punishment of 6 months or less or a fine	<ul style="list-style-type: none"> • Police <u>can arrest, summons or charge a juvenile between the ages of 12 and 18</u> who commits a misdemeanor which has a punishment of 6 months or less or a fine.
Felonies and misdemeanors with a punishment greater than 6 months	<ul style="list-style-type: none"> • . NOTE: <u>CJRB never changed police authority</u> to arrest, summons, or charge juveniles between the ages of 12 and 18 who commit a felony or misdemeanor with a punishment greater than 6 months.
Decriminalizes School Based Offenses	<ul style="list-style-type: none"> • Police <u>cannot arrest, summons or charge a juvenile</u> for the following offenses <ul style="list-style-type: none"> ○ Disturbing a School Assembly or ○ Disorderly Conduct <u>on school grounds or at a school related event.</u>
Changes with Lockup for Juvenile and Notification Procedures	<ul style="list-style-type: none"> • Police notify parents, guardian or person acting in loco parentis. Police are not required to call probation. • Limits how DYS and DOC place juveniles and prohibits any contact with adult inmates.
School Resource Officer Training	<ul style="list-style-type: none"> • Subject to annual evaluation • Standard Operating Procedures (SPOs) will define role of SRO in schools • Memorandums of Understanding should exist between schools and police at a minimum.

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- ❖ **NOTE:** Juvenile Court will track whether the juvenile has committed a first offense of a misdemeanor through MassCourts.
- ❖ The court's internal record keeping database (MassCourts) will track any charges that are dismissed as a "first offense" under § 52. The records are kept internally and will be reviewed when tracking whether Juvenile Court has properly exercise jurisdiction over subsequent offenses. These records do not create a CARI record and they are not accessible to the public. **Juvenile Court Standing Order 1-84 (1984) ("All juvenile court case records and reports are confidential and are the property of the court").**
- ❖ A second issue that may arise concerns how the Commonwealth can prove that a juvenile in one county committed his or her first offense in a separate county months, or even years, prior. The Commonwealth would be responsible for tracking down evidence and witnesses from other counties. It may be challenging to require witnesses to participate in a proceeding that has no other legal effect than to establish that a first offense has occurred.

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