

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

Kimberly S. Budd
Chief Justice

-
1. Court Submitting Rules for Approval:

Juvenile Court Department

2. Date Rules Submitted for Approval:

June 22, 2022

3. Date Approved & Promulgated by the Supreme Judicial Court:

July 13, 2022

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Juvenile Court Rules for First Offense Determinations and Hearings Held Pursuant to *Commonwealth v. Wallace W.*, 482 Mass. 789 (2019), as attached.

5. Effective Date:

October 1, 2022

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE TRIAL COURT OF MASSACHUSETTS JUVENILE COURT DEPARTMENT

1 Center Plaza, Seventh Floor
Boston, MA 02108

Amy L. Nechtem
Chief Justice of the Juvenile Court

Thomas R. Capasso
Deputy Court Administrator

June 22, 2022

Hon. Frank M. Gaziano, Chair
Supreme Judicial Court Rules Committee
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

**RE: JUVENILE COURT RULES FOR FIRST OFFENSE DETERMINATIONS AND
HEARINGS HELD PURSUANT TO *COMMONWEALTH V. WALLACE W.*, 482 MASS. 789
(2019)**

Dear Justice Gaziano:

Enclosed please find proposed Juvenile Court Rules for First Offense Determinations and Hearings Held Pursuant to *Commonwealth v. Wallace W.*, 482 Mass. 789 (2019) (“Rules”), which I am submitting to the Rules Committee for approval by the Supreme Judicial Court. This is a new set of Rules promulgated by the Juvenile Court. In *Commonwealth v. Nick N.*, 486 Mass. 696 (2021), the Supreme Judicial Court wrote that the Juvenile Court “should use its authority to promulgate more specific notice and discovery rules” regarding *Wallace W.* hearings. See *Nick N.* at 711.

These Rules are applicable to all applications for complaint and delinquency matters filed in the Juvenile Court. The Rules address the issues of notice and discovery and set forth the conduct of a *Wallace W.* hearing. In addition, the Rules address the process for determining whether a *Wallace W.* issue exists upon the filing of an application for complaint in the Juvenile Court.

A *Wallace W.* Rules Committee (“Wallace committee”) composed of judges and staff from the Administrative Office met over a 3-month period to draft the Rules. On August 6, 2021, the Rules were sent to Lawyers Weekly for publication and posted on the Juvenile Court website. The Rules were also sent out directly to all Juvenile Court judges, clerk-magistrates, and chief probation officers. The comment period ended on September 24, 2021. Comments were received from the Committee for Public Counsel Services, the Essex County District Attorney’s Office, the Juvenile Court clerk-magistrates, MA Probation Service, an Appeals Court judge, a Juvenile Court judge, and a defense attorney. The Wallace committee reviewed and considered all comments received regarding the proposed Rules.

If you or a member of the committee has any questions about the proposed Rules, please do not hesitate to contact Anne Marie Ritchie, Assistant Deputy Court Administrator or me by email or by phone at (617) 788-6550.

Sincerely,

/s/ Amy L. Nechtem

Amy L. Nechtem
Chief Justice

cc: Christine P. Burak, Legal Counsel to the Chief Justice

**JUVENILE COURT RULES FOR
FIRST OFFENSE DETERMINATIONS AND HEARINGS HELD PURSUANT TO
COMMONWEALTH v. WALLACE W., 482 Mass. 789 (2019)**

Rule 1. Scope of Rules

These rules apply to all applications for complaint and delinquency matters filed in the Juvenile Court alleging a child to be a delinquent child pursuant to G.L. c. 119, § 52.

Note

In *Commonwealth v. Nick N.*, 486 Mass. 696, 711 (2021), the Supreme Judicial Court (SJC) advised that the Juvenile Court should promulgate appropriate rules addressing notice and discovery procedures to provide clarity and consistency going forward regarding hearings held pursuant to *Commonwealth v. Wallace W.*, 482 Mass. 789 (2019).

Rule 2. Definition of Terms

The terms below shall have the following definitions:

“Application for complaint” means the application filed by a complainant alleging that the child has committed a criminal offense and is therefore a delinquent child.

“By-law” means a rule or regulation created and enforced by a local authority such as town or city that is applicable only within that town or city.

“Civil infraction” means any violation of any statute, ordinance, by-law, or regulation except for civil motor vehicle infractions as defined by G.L. c. 90C, § 1, para. 7(c) for which the maximum penalty provided is a fine only.

“Clerk’s hearing” means the hearing held pursuant to G.L. c 218, § 35A, where the clerk-magistrate is responsible for deciding whether probable cause exists for the issuance of the delinquency complaint. This hearing is also known as a “show cause” hearing or “probable cause” hearing.

“Delinquent child” means a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include a civil infraction, a violation of any municipal ordinance or town by-law or a first offense of a misdemeanor for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.

“Felony” means an offense for which the punishment may be imprisonment in a state prison.

“First offense” means the first time a child is alleged to have committed a single minor misdemeanor or the first time a child is alleged to have committed multiple minor misdemeanors stemming from one single incident.

“Major misdemeanor” means an offense for which the punishment is a fine, imprisonment in a jail or house of correction for greater than 6 months or both such fine and imprisonment.

“Minor misdemeanor” means an offense for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.

“Ordinance” means the same as by-law. See G.L. c. 4, § 7.

“Record” means when a child been arraigned for a criminal offense in Juvenile Court resulting in an entry on their criminal activity record information (CARI) or when a search of the court’s statewide docketing system results in either one or more criminal court appearances for the child or a designation that a complaint has been dismissed for lack of jurisdiction pursuant to Rule 3 of these Rules.

“Wallace W. hearing” means the hearing held on a delinquency complaint where the Commonwealth must prove beyond a reasonable doubt that the child committed a prior offense.

Rule 3. Filing of Application for Complaint and First Offense Determination

A. Filing of Application for Complaint

When the clerk-magistrate receives an application for complaint, the clerk-magistrate shall create/initiate an application for complaint in the court’s statewide docketing system. If one or more of the charges listed in the complaint is a minor misdemeanor, the clerk-magistrate shall search the child’s name in the index of that system for all Juvenile Court locations to determine whether the child has any record. The clerk-magistrate shall then make the determination as to whether the court lacks jurisdiction to hear the complaint, or whether a clerk’s hearing should be scheduled for the complaint based on the scenarios outlined in subsection B of this rule.

1. Out of State Records Search

If the application for complaint alleges a single minor misdemeanor or multiple minor misdemeanors from one single incident, and a search of the statewide docketing system does not list an entry for the child in another criminal matter, the clerk-magistrate shall request that probation conduct a search of out of state records regarding the child for the purposes of making a first offense determination under *Wallace W.* only. If the result of the out of state search is no record for the child, then the clerk shall follow the process provided for in section B.1. of this rule. If the out of state records search does result in a record for the child, the clerk shall follow the process provided for in section C of this rule.

B. When the Child Has No Record

1. The application for complaint alleges a single minor misdemeanor or multiple minor misdemeanors from one single incident

The clerk-magistrate shall dismiss the complaint for lack of jurisdiction. The dismissal shall be noted on the docket of the application for complaint using the docket code designated by the Administrative Office of the Juvenile Court.

2. The application for complaint alleges a major misdemeanor and/or felony

The clerk-magistrate shall schedule a clerk's hearing if the complaint alleges a major misdemeanor, shall schedule a clerk's hearing if the complaint alleges a felony only if such a hearing is requested by law enforcement, and may schedule a clerk's hearing in other circumstances consistent with G.L. c. 218, § 35A.

3. The application for complaint alleges a combination of one or more minor misdemeanors and one or more major misdemeanors or felonies from one single incident

The clerk-magistrate shall dismiss the minor misdemeanors as a first offense and shall determine whether process shall issue in the normal course on the other offense(s). The dismissal of the minor misdemeanors shall be noted on the docket of the application for complaint using the docket code designated by the Administrative Office of the Juvenile Court.

4. A single application for complaint alleges multiple offenses from separate incidents, and the major misdemeanors and/or felonies arose out of an incident that occurred before the incident where the minor misdemeanors occurred

The Commonwealth may determine to keep the minor misdemeanors in the pre-arraignment phase and proceed on the major misdemeanors and/or felonies only. If, following arraignment, the Commonwealth proves the major misdemeanors and/or felonies, the Commonwealth may then seek to arraign on the minor misdemeanor(s) without holding a Wallace W. hearing. A prior charge shall be considered "proven" if it resulted in an adjudication of delinquency, youthful offender, or continued without a finding after a plea of delinquency or a verdict of delinquency.

5. A single application for complaint alleges multiple offenses from separate incidents, and the minor misdemeanors arose out of an incident that occurred before the incident where one or more major misdemeanors and/or felonies occurred

The clerk-magistrate shall dismiss the minor misdemeanors as a first offense and shall determine whether process shall issue in the normal course on the other offense(s). The dismissal of the minor misdemeanors shall be noted on the docket of the application for complaint using the docket code designated by the Administrative Office of the Juvenile Court.

C. When the Child Has a Record

1. The application for complaint alleges one or more minor misdemeanors, and the child has a record consisting of previous adjudications of delinquency, youthful offender or continued without a finding after a plea of delinquency or a verdict of delinquency or admission to sufficient facts

The clerk-magistrate shall schedule a clerk's hearing and determine whether probable cause exists for the complaint to issue as to the new offense.

2. The complaint alleges one or more minor misdemeanors and the child has a record consisting only of one or more of the following: a dismissal of a previous offense as a 'first offense', any other dismissal that is not on the merits, including, but not limited to, dismissal for lack of prosecution, dismissal after a general continuance, or dismissal following judicial or prosecutor diversion, a nolle prosequi or an open case

The clerk-magistrate shall notify the Commonwealth pursuant to section 4 of these Rules that the complaint raises a Wallace W. issue. If the Commonwealth notifies the clerk-magistrate in writing that it intends to prove multiple offenses, the clerk-magistrate may issue a delinquency complaint on the minor misdemeanor(s) after a finding of probable cause. Once the complaint is issued, a Wallace W. hearing shall be scheduled by the court. If the Commonwealth does not intend to proceed, the clerk-magistrate shall dismiss the application for complaint for lack of jurisdiction. The dismissal of the minor misdemeanor shall be noted on the docket of the application for the complaint using the docket code designated by the Administrative Office of the Juvenile Court.

3. The application for complaint alleges one or more minor misdemeanors and the child has a record consisting only of a dismissal on the merits

The clerk-magistrate shall dismiss the minor misdemeanors for lack of jurisdiction. The dismissal of the minor misdemeanors shall be noted on the docket of the application for complaint using the docket code designated by the Administrative Office of the Juvenile Court.

D. Notification to the Commonwealth

The clerk-magistrate shall notify, in writing, the Assistant District Attorney assigned to the Juvenile Court to determine whether the Commonwealth intends to prove multiple offenses. If the Commonwealth confirms that they intend to proceed on multiple offenses, the complaint shall issue and the clerk shall schedule a Wallace W. hearing. If the Commonwealth does not respond in writing within 30 days of notification by the clerk-magistrate, the clerk-magistrate shall dismiss the complaint as a 'first offense' based on lack of jurisdiction. *See Wallace W.* at 801. The clerk-magistrate shall docket the notification to and response from the Commonwealth on the case using the docket codes designated by the Administrative Office of the Juvenile Court.

Note

Sections A. and B. of this rule are a compilation of the various scenarios presented in *Commonwealth v. Wallace W.*, *Commonwealth v. Nick N.* and *Commonwealth v. Manolo M.*, 486 Mass. 678 (2021). **There may be other possible scenarios not included in this list. Every application for complaint with a minor misdemeanor should be reviewed to determine whether a Wallace W. hearing is necessary.** Section A. of this rule requires the clerk-

magistrate to search the statewide docketing system to determine whether the child has any prior court appearances.

Sections B.4 and 5 refer to scenarios involving multiple offenses from different incidents appearing on one single complaint. The focus of the analysis as to whether a Wallace W. issue exists is on the timing of the incidents not the number of complaints.

Rule 4. Notice and Scheduling of Wallace W. Hearing

A. Summons Arraignment. After receiving notice from the Commonwealth that it intends to prove multiple offenses at a Wallace W. hearing, the clerk-magistrate, after finding probable cause, shall issue the complaint. If the complaint issues, the clerk-magistrate shall issue a summons pursuant to G.L. c. 119, § 54. The summons shall set forth the date and time of the arraignment. In addition, the summons shall state that prior to the arraignment, the Commonwealth intends to prove prior offenses at a Wallace W. hearing. The summons shall list those offense(s). The summons shall also list the name and contact information for the child's court appointed counsel. Counsel shall be appointed by the court prior to the issuance of the summons. The summons shall be served on the child and parent by first class mail unless otherwise ordered by the court. A copy of the summons shall be mailed to the child's attorney and the prosecutor. Service of the summons shall be docketed on the case.

1. Scheduling of the Wallace W. Hearing. The clerk-magistrate shall send the summons to the parties within 7 days of the issuance of the delinquency complaint. The Wallace W. hearing shall be scheduled for a date certain no more than 14 days from the service of the summons. Any party may file a motion with the court requesting that the Wallace W. hearing be rescheduled to a later date to allow for discovery and the summoning and preparation of witnesses. The hearing, however, shall not be rescheduled for later than 28 days from the issuance of the complaint, although the judge may grant a continuance beyond this time for good cause shown.

B. Arraignment Following Arrest. When a child is before the court for an arraignment as the result of an arrest, if one or more of the offenses for which the child has been arrested for is a minor misdemeanor, the court shall inquire whether the Commonwealth seeks to move forward with a Wallace W. hearing. If the Commonwealth decides not to move forward, the minor misdemeanors shall be dismissed for lack of jurisdiction as a first offense. The child may be arraigned on the other charges, if applicable. If the Commonwealth decides to move forward with a Wallace W. hearing, the arraignment shall be rescheduled for another date and the child and their attorney shall be provided with notice regarding the Wallace W. hearing, the date of the hearing and the offense(s) which the Commonwealth intends to prove as prior offenses. The notice shall be served on the child in-hand if physically present in court or by first class mail unless otherwise ordered by the court. The notice shall be on a form approved by the Chief Justice of the Juvenile Court.

1. Scheduling of the Wallace W. Hearing. The Wallace W. hearing shall be scheduled for a date certain no more than 14 days from the date of the original arraignment. Any party may file a motion with the court requesting that the Wallace W. hearing be

rescheduled to a later date to allow for discovery and the summoning and preparation of witnesses. The hearing, however, shall not be rescheduled for later than 28 days from the issuance of the complaint, although the judge may grant a continuance beyond this time for good cause shown.

Note

In *Nick N.*, the SJC held that the Commonwealth may move forward with the arraignment on the greater offenses without the need to hold a Wallace W. hearing on those offenses. If after arraignment the greater offenses are proven, the Commonwealth may arraign on the minor misdemeanor because it would no longer be considered a first offense. See *Nick N.* at 700, 701.

The SJC noted that though it wrote in *Wallace W.* that ‘the juvenile may move to dismiss the complaint’ this language does not confine to the juvenile the responsibility of attentiveness to proper jurisdiction. See *Wallace W.*, 482 Mass. at 800-801. “Subject matter jurisdiction may be raised by either party or the court at any time and cannot be conferred by waiver.” See *Nick N.* at 702.

Rule 5. Discovery

The Commonwealth shall disclose to the child and the child’s attorney the specifics of the charges against the child and the evidence that will be presented against the child at the Wallace W. hearing. The Commonwealth shall provide this information or allow for the inspection and copying of such information no less than 7 days prior to the date of the Wallace W. hearing. As part of the disclosure the Commonwealth shall provide to the defense the following information within its possession, custody and control if relevant to the Wallace W. hearing: (1) police report(s) relating to the case; (2) names, addresses and dates of birth of the Commonwealth’s prospective witnesses other than law enforcement witnesses; (3) names and business addresses of prospective law enforcement witnesses; and (4) any other relevant information as ordered by the court.

The child and the Commonwealth may move for discovery of other material and relevant evidence not required by this Rule prior to the Wallace W. hearing.

Note

The SJC determined that written notice and “some disclosure” to the child were required in the context of a Wallace W. hearing. See *Nick N.* at 710. The SJC wrote “[S]ome exchange of discovery is necessary to protect the juvenile’s interest by providing the juvenile with an opportunity to mount an effective defense.” See *Nick N.* at 710, 711.

Rule 6. Conduct of Hearing

The Wallace W. hearing shall be conducted by a judge on the record. The child shall be entitled to the appointment of counsel. The Commonwealth shall be required to present evidence to support a finding of beyond a reasonable doubt that the minor misdemeanor is not the child’s first offense. The child is entitled to be heard in opposition and may cross examine witnesses and present evidence. All testimony shall be taken under oath. The scope of the inquiry shall be

limited to the issue of whether there is proof beyond a reasonable doubt that the minor misdemeanor charged against the child is not the child's first offense.

If the judge determines that the Commonwealth has met the burden and proven beyond a reasonable doubt that the minor misdemeanor is not the child's first offense, then the case shall proceed to arraignment. The arraignment may be held forthwith or may be scheduled to be held within 7 days from the issuance of the judge's decision.

If the judge determines that the Commonwealth failed to prove beyond a reasonable doubt that the minor misdemeanor is not the child's first offense, the judge shall dismiss the charge for lack of jurisdiction and the complaint shall be dismissed.

Nothing in this rule precludes a judge from making a reasonable doubt determination based solely on the child's record and other documents presented to the court and without the need for witnesses. *See Nick N.* at 707, 708. "[P]apers alone' could theoretically be sufficient to prove a prior offense beyond a reasonable doubt...In proving a case on 'papers alone,' the indicia of reliability of such hearsay evidence must be substantial..." *See Nick N.*, at 707.

Note

The clerk-magistrate shall docket the court's finding and any other orders issued by the court using the appropriate docket codes approved by the Administrative Office of the Juvenile Court. A child is not entitled to hearing before a jury to prove a first offense. *See Nick N.* at 707, FN 10.

Rule 7. Hearsay Evidence

A. Admissibility of Hearsay Evidence. Reliable hearsay evidence shall be admissible at a Wallace W. hearing.

B. Legal Sufficiency of Hearsay Evidence. The court may rely solely on hearsay evidence regarding whether the minor misdemeanor for which the child is charged is the child's first offense only if the court finds in writing that the hearsay is substantially reliable. In determining if hearsay is substantially reliable, the court may consider, among other relevant factors, whether the evidence:

- (1) is based on personal knowledge and/or direct observation, rather than on other hearsay;
- (2) involves observations recorded close in time to the events in question;
- (3) is factually detailed, rather than generalized and conclusory;
- (4) is internally consistent;
- (5) is corroborated by any evidence provided by the child;
- (6) was provided by a disinterested witness; or

(7) was provided under circumstances that support the veracity of the source, for example under the pains and penalties of perjury or subject to criminal penalties for providing false information.

Note

The SJC allowed for the admission of reliable hearsay at a Wallace W. hearing “as defined by the *Durling* case (*Commonwealth v. Durling*, 407 Mass. 108 (1990)) and its successors.” See *Nick N.* at 706. To the extent possible it is recommended that children and victims not be compelled to testify at the Wallace W. hearing if reliable hearsay is available. See *Nick N.* at 708, 709.

Rule 8. Admissibility of Wallace W. Hearing Determination in Other Delinquency Proceedings

Where a delinquency matter has been the subject of a prior Wallace W. hearing that reached a ruling on the merits, if the same delinquency matter serves as the basis of a subsequent Wallace W. hearing, a judge is not compelled to revisit the previous ruling and hold a new Wallace W. hearing unless the judge finds that to revisit it would be in the interest of substantial justice.

Note

This language is similar to Rule 13 of the Rules of Criminal Procedure which allows a judge to revisit previously ruled on pre-trial motions. Subdivision (a)(5) of the Rule provides that although a motion has been heard and denied, it may be renewed if “substantial justice requires” that action. This is appropriate where new or additional grounds are alleged which could not reasonably have been known when the motion was originally filed. Similarly, if counsel can show that new evidence or grounds exist that could not have been reasonably known at the time of the earlier Wallace W. hearing, a judge may decide to revisit the prior ruling in the interests of justice.