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JUVENILE ARREST AUTHORITY

August 13, 2019: Important update for the Massachusetts law enforcement community

With one exception, police officers may arrest a juvenile for any crime that they could arrest an adult for. In *Wallace A., a juvenile v. Comm.*, 482 Mass. 514 (2019), our SJC established that changes to juvenile jurisdiction did not affect officers' arrest authority for minor misdemeanors.¹

- ***Let's be clear: Consistent with public safety and their good judgment, officers may arrest juveniles in their presence who:***
 - Engage in disorderly conduct, 272, § 53.
 - Disturb the peace, 272, § 53.
 - Interrupt a lawful assembly, 272, § 40.
- ***School exception for these 3 offenses:*** Under 272, §§ 53 and 40, disorderly, disturbing, or interrupting may not be the basis for arrest, or even a complaint application, when the juvenile is a student on school property or at a school-related event.
- ***All these other crimes apply to juveniles anywhere, including school. Officers may arrest juveniles in their presence who:***
 - Disturb a library, 272, § 41.²
 - Indecently expose themselves, 272, § 53.
 - Annoy and accost a person sexually, 272, § 53.
 - Drive without a license, 90, § 10.
 - Operate after suspension, 90, § 23.
 - Fail to stop for a police officer, 90, § 25.
 - Trespass, 266, § 120.
 - Break and enter (B&E) with intent to commit a misdemeanor, 266, § 16A.
 - Possess an alcoholic beverage, 138, § 34C.

¹ Chapter 69 of the Acts of 2018 (known as "criminal justice reform") removed from the jurisdiction of the juvenile court, in 119, § 52, civil infractions, municipal ordinance or bylaw violations, and first offense minor misdemeanors (defined as crimes for which the punishment cannot exceed 6 months in the house of correction or a fine). See St. 2018, c. 69, § 72.

² Interestingly, students are not exempt from this particular crime.

- **Officers may also arrest – on probable cause – juveniles in any location who:**
 - Shoplift goods with a retail value of less than \$250, 266, § 30A.
 - Possess over 2 ounces of marijuana, 94C, § 34.^{3,4}

Chart clarifies juvenile court procedure for processing minor misdemeanors. The SJC in *Wallace*⁵ set forth the procedure for minor misdemeanor cases, including a hearing for prosecutors to prove the existence of a first offense misdemeanor. Please review the chart at the end of this bulletin. If you are an officer who serves as a “police prosecutor” or “court liaison,” you will want to take a close look (and pass it on to your juvenile court prosecutor!). For street officers, mastering the nitty-gritty of 119, § 52 is unnecessary. Just continue to apply your good judgment and communication skills and, when called for, make the arrest.

A final, important reminder: Keep issuing tickets! Officers have been confused about the new version of 119, § 52 because it excludes all civil infractions and all ordinance and bylaw violations *from the jurisdiction of the juvenile court*. This has little effect on the reality of police enforcement. After all, civil motor vehicle infractions (CMVIs) and ordinance/bylaw tickets are resolved in the *district court*. As a result, there is nothing preventing officers from stopping a juvenile driver and giving her a citation for a red light violation, or detaining a marijuana smoking juvenile and handing him a local ordinance/bylaw ticket for minor in possession [94C, § 32L] and public consumption [94G, § 13(c)]! Please remember:

- **CMVIs.** 90C, § 3 established that motorist appeals for CMVIs occur in the district court, not juvenile.⁶ Officers should issue CMVIs to juveniles and file them with the registry or, in the case of a citation with a mixture of CMVIs and a motor vehicle *crime*, file it with the juvenile court.

The only slight difference is that the juvenile court, in these mixed CMVI/crime cases, will lack the authority to find the juvenile defendant responsible of any *civil violation*.⁷ But this is not a big deal.

³ 94C, § 41 authorizes arrest on probable cause for this offense. 94C, § 32L establishes that possession of 2 ounces or less of marijuana is a civil violation for people under 21, and a criminal violation for more than 2 ounces. 94G, § 13(e) establishes essentially the same rule for adults 21 and over. Caution: Different rules apply for medical marijuana cardholders. See *LED's 2019 Drug Cases Manual, Chapter 7* for more details.

⁴ All other misdemeanors for which the police have a right of arrest on probable cause, have maximum penalties beyond 6 months in the house of correction. Other than shoplifting under \$250 and possession of Class D over 2 ounces, the only other exception is theft of a public record, 266, § 145.

⁵ In *Wallace*, the juvenile's predicament was not important to the SJC's decision. Simply put, the juvenile had some open cases when he was arrested by police for operating without a license, a minor misdemeanor.

⁶ Technically, in the past, the district court transformed a few CMVIs into delinquency matters for the juvenile court (e.g., operating a moped without a license). This is one of the few changes brought by 119, § 52 that the author agrees with!

⁷ It is these types of unnecessary glitches that call for a legislative fix to 119, § 52. For example, why shouldn't a juvenile judge be able to rule on a civil infraction and impose the fine just like district and superior court judges? What does the juvenile court do with these mixed cases now? Dismiss all CMVIs? And, if so, how will that connect with the registry's internal system, insurance surcharges by the merit rating board, etc.? Will juveniles

The juvenile judge may still consider the nature of the violation in determining the validity of the vehicle stop which – let's face it – is the key concern of the cop and prosecutor arguing a criminal case involving an arrest for OUI, or use without authority, or leaving the scene after injury, etc.

- **Ordinance and bylaw tickets, including those pertaining to marijuana violations.** This change in juvenile court jurisdiction may, to some degree, affect the police response. The reason is that officers are *no longer able to arrest*, or apply for a criminal complaint, against juveniles who violate a municipal law. This includes, for example, an ordinance or bylaw that prohibits public drinking, trespassing after-hours in the park, obstructing a public passageway, or possessing a knife with a blade longer than 2½" (which Lynn and several other cities have).

Practically speaking, officers will often have an arrest substitute that they can use. For example, instead of arresting 16-year-old Johnny for public drinking, simply go with minor in possession (138, § 34C). Instead of arresting 17-year-old Sarah for misbehaving in the local park after 9 p.m. in violation of a town bylaw, simply go with trespassing (266, § 120) based on the posted sign. Instead of arresting Tim for violating the ordinance concerning "peeping and spying," just use disorderly conduct (272, § 53) for this "Peeping Tom."⁸

Furthermore, the inability to arrest, or even apply for a complaint, does not prevent officers from pursuing civil violations of municipal laws – e.g., if you can, go with the civil ticket option for public alcohol consumption, littering, leash law, junk car, knife ordinance, etc. The civil process for ordinance and bylaw violations appears in 40, § 21D (often referred to as the "21D process"). These 21D violations are written on a local ticket form by officers (just like parking tickets!). They are issued to the offender, who can either pay the fine to the municipal clerk at the address listed, or request a hearing at the district court. [Again, note how these tickets are *not* within the jurisdiction of the juvenile court to begin with! See the attached sample.]

The marijuana law explicitly applies the 21D process to all civil violations. See 94G, § 13(g). As a result, officers should, for example, simply detain Stuart, request identification, and write out a local 21D ticket for his "open container of marijuana," a violation of 94G, § 13(d), which carries a \$500 penalty.⁹

Hope this helps you on the street,

John Sofis Scheft

have the possibility of license suspensions and remedial classes, or will these serious CMVI cases end up in legal limbo and further diminish public safety? In short, what possible rehabilitative value was there in excluding CMVIs from any juvenile court review without some explicit procedure? See *Wallace*, 482 Mass. 514 (at the end of its opinion, SJC strongly suggested that the legislature fix the existing and anticipated problems in § 52).

⁸ See *Comm. v. LePore*, 40 Mass. App. Ct. 543 (1996).

⁹ There are other complexities that apply to, for example, the juvenile who receives a ticket for minor in possession of marijuana. For more information, see *LED's 2019 Juvenile Issues, Chapter 12*, or *LED's Drug Cases Manual, Chapter 7*.



JUVENILE COURT DISPOSITION OF MINOR MISDEMEANORS

Chart based on

119, § 52 and *Wallace A., a juvenile v. Comm.*, 482 Mass. 514 (2019)

Presented on 8/12/19 by

John Sofis Scheft, Esq. & Law Enforcement Dimensions, LLC

Key definitions	<p>Minor Misdemeanor (MM): Crime punishable by a fine and/or NMT 6 months in house of correction (HC). Serious Misdemeanor (SM): Crime punishable by over 6 months in the HC. Felony (F): Crime punishable by state prison. Adjudication: The juvenile court's term for a criminal conviction.</p>	
PRIOR CRIMINAL HISTORY	NEW CHARGE	JUVENILE COURT PROCEDURE
1. Adjudicated in Massachusetts or out-of-state ¹ for any past MM, or SM, or F ²	MM	<ul style="list-style-type: none"> • <u>Arraignment</u> for juvenile on new charge. • Case goes forward in the normal manner.
1. No prior adjudication; <u>or</u> 2. Only prior case(s) dismissed "on merits" ³	MM	<ul style="list-style-type: none"> • <u>No arraignment.</u> • Case dismissed under 119, § 52 for lack of jurisdiction.
1. No prior adjudication; <u>or</u> 2. Only prior case(s) dismissed "on merits"	2 or more MMs or MM and SM or F ⁴	<ul style="list-style-type: none"> • <u>Special Wallace procedure.</u> • Probable cause (PC). Clerk must find PC for new MM. Notification. Commonwealth files notification that it intends to prove prior charge or multiple offenses. Motion to dismiss. Juvenile motion to dismiss <i>before</i> arraignment on grounds that current charge is juvenile's 1st MM. Hearing. Pre-arraignment hearing by judge: <ul style="list-style-type: none"> • Beyond a reasonable doubt (BARD). Commonwealth must prove BARD that juvenile committed a triggering offense.⁵ • If BARD: Judge arraigns juvenile on new MM. • If proof lacking: Judge dismisses MM pursuant to 119, § 52. Proceeding only appears in MassCourts (internal database) and <i>not</i> in CARL. No public access in any event.⁶
1. Dismissed past MM pursuant to 119, § 52 for lack of jurisdiction (see above); <u>or</u> 2. CWOFF for past MM, or SM, or F; <u>or</u> 3. Open case for past MM, or SM, or F	MM	

¹ The SJC explicitly mentioned out-of-state adjudications as triggering a past offense for 119, § 52 purposes. See *Wallace* at 20 [note: page citations are to the "slip opinion" – SJC-12669 – for *Wallace A., a juvenile v. Comm.*, 482 Mass. 514 (2019)].

² Any prior minor misdemeanor, serious misdemeanor, or felony qualifies as a 1st offense, which triggers an arraignment for the ensuing minor misdemeanor. *Id.* at 3.

³ *Id.* at 20, note 4.

⁴ Multiple offenses in the same event may qualify as the foundation for the 2nd minor misdemeanor. *Id.* at 20-21. So may §52 dismissals, CWOFFs, or open cases. *Id.* at 20-21.

⁵ *Id.* at 21-22.

⁶ *Id.* at 23, note 7.

Sample of an Ordinance/bylaw Ticket for Marijuana Civil Violations

Note: All information is fictitious.

VIOLATION 209001

**CITY OF SPRINGFIELD • NOTICE OF VIOLATION
VIOLATION ORDINANCE, RULE, LAW OR REGULATION**

OFFENDER NAME				JACK SMITH			
ADDRESS				131 Main St., Apt. 6			
CITY		STATE		ZIP CODE			
Holyoke		MA		01040			
DOB		LICENSE #		SS #			
6/14/2003		N/A		020-36-2991			
PLATE NO.	MAKE	TYPE	COLOR				
ABC-137	HONDA	CIVIC	BLUE				
OFFENSE(S)							

MINOR POSS MJ - ~~94C~~ 94C 32L \$100
OPEN CONTAINER MJ - 94G, 13(d) \$500

TIME OF VIOLATION (AM)		2:00 (PM)		SECTOR		5	
DATE OF VIOLATION		8/05/2019		LOCATION OF VIOLATION		JONES ST.	
SIGNATURE OF ENFORCING PERSON		EMPLOYEE ID		ENFORCING AGENCY			
John Duke*		302		SPD			

I HEREBY ACKNOWLEDGE THE FOREGOING CITATION
 Refused to sign *JOHN M. DUKE, officer,
 Unable to obtain signature. Date Mailed _____
The Non-CRIMINAL FINE FOR THIS OFFENSE IS \$600 total

Either option (1) or (2) will operated as a final disposition, with no criminal record.

(1) You may choose to pay the above fine, either by appearing in person or through a duly authorized agent, between 10:00AM and 4 PM Monday-Friday except Thursday, between 10:00AM-6:00PM or by mailing a check, money order or postal notice WITHIN IN 21 DAYS OF THIS NOTICE TO:

CITY CLERK, City of Springfield 36 Court St., Springfield, MA, 01103

(2) If you decide to contest this matter, you may do so by a making a written request for a noncriminal hearing, and enclosing a copy of this citation. WITHIN IN 21 DAYS OF THIS NOTICE to:

Clerk Magistrate District Court 50 State St., Springfield, MA, 01103

(3) If you fail to pay the above fine or request a hearing within in 21 days, or if you fail to appear for the hearing or to pay any fine determined at the hearing to be due, a criminal complaint may be issued against you.

I HEREBY ELECT THE FIRST OPTION above, confess the offense charged, and enclose payment in the amount of \$ _____

I HEREBY REQUEST A NONCRIMINAL HEARING on this matter

Signature _____

PLEASE PEEL OFF TAPE AND FOLD FLAP TO SEAL ENVELOPE.