EMERGENCY ALERTS

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TRIAL COURT RULES

Administrative Order

Trial Court Emergency Administrative Order 20-6: Temporary alternative procedures for Bail Magistrates and Bail Commissioners setting and taking bail after court hours during the COVID-19 pandemic

ADOPTED DATE:

04/01/2020

EFFECTIVE DATE:

04/01/2020

REFERENCED SOURCES:

Governor's Declaration of Emergency (https://www.mass.gov/media/2171956/download)

UPDATES:

Adopted effective April 1, 2020 (https://www.mass.gov/media/2114886/download)

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Introduction

Due to the extreme risk of person-to-person transmission caused by the 2019 novel Coronavirus (COVID-19), which has been declared a pandemic by the World Health Organization, and which has occasioned the declaration of a State of Emergency in the Commonwealth of Massachusetts, **Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19** (/doc/governors-declaration-of-emergency-march-10-2020-aka-executive-order-591/download);

It is hereby ORDERED, pursuant to my authority as set forth in G.L. c. 211B, § 9, that, effective April 1, 2020, Bail Magistrates and Bail Commissioners may release individuals under arrest without the need to appear in person at the place of detention subject to the following:

I. Bail Magistrates

Police departments, jails and houses of correction, programs operated by or for the Department of Youth Services (collectively, "holding authorities") in jurisdictions utilizing Bail Magistrates may provide Bail Magistrates with information concerning individuals under arrest, including but not limited to booking sheets, arrest reports, applications for criminal complaints and Court Activity Record Information (CARI) reports telephonically or via electronic mail, facsimile or other electronic means. The CARI report shall include the information from the Registry of Civil Restraining Orders, the Criminal Justice Information System as maintained by the Department of Criminal Justice Information Services and information provided by the Registry of Motor Vehicles.

The Bail Magistrate shall review the documents and set personal recognizance, cash bail and/or terms of release and communicate same to the holding authority.

The holding authority will complete and sign the Recognizance Form according to the instructions of the Bail Magistrate.

Any information provided to Bail Magistrates shall only be used for criminal justice purposes related to their official duties and responsibilities during the hours that courts are closed. The documents must be kept confidential and shall be destroyed unless such information is required to be maintained as a part of the case file.

II. Bail Commissioners

Jurisdictions utilizing Bail Commissioners may communicate telephonically with the scheduled Bail Commissioner, but shall provide the information concerning the individual under arrest to the State Bail Administrator via electronic mail, facsimile or other electronic means. The State Bail Administrator will communicate telephonically with the Bail Commissioner to review the documents.

The Bail Commissioner shall then set personal recognizance, cash bail and/or terms of release and communicate the same to the holding authority.

The holding authority will complete and sign the Recognizance Form according to the instructions of the Bail Commissioner.

III. Releases on personal recognizance

The bail colloquy between Bail Magistrates or Bail Commissioners and the individual under arrest may be telephonically. The individual under arrest and any interpreter, if an interpreter is necessary, will be placed under oath by the Bail Magistrate or Bail Commissioner. The Bail Magistrate or Bail Commissioner will conduct the colloquy with the individual in custody. The holding authority will indicate where the individual under arrest is to sign the Recognizance Form and will provide the individual with the copy of the Recognizance form marked “Defendant Copy.”

The Bail Magistrate or Bail Commissioner will not be entitled to a fee pursuant to G.L. c. 262, § 24 if they conduct the release of an individual on personal recognizance remotely. Bail Magistrates and Bail Commissioners employed by the Trial Court will be entitled to receive compensatory time for each remote release. Bail Magistrates and Bail Commissioners employed by the Trial Court will be entitled to receive compensatory time for each remote release, with the accrual and use of said time to be prescribed by the accompanying Transmittal.

IV. Releases on cash bail

If the Bail Magistrate or Bail Commissioner sets a cash bail and the individual under arrest is able to post the bail, the Bail Magistrate or Bail Commissioner may conduct the release of the individual telephonically.

The individual under arrest and any interpreter, if an interpreter is necessary, will be placed under oath by the Bail Magistrate or Bail Commissioner. The Bail Magistrate or Bail Commissioner will conduct the colloquy with the individual in custody. The holding authority will indicate where the individual under arrest is to sign the Recognizance Form and will provide the individual with the copy of the Recognizance form marked “Defendant Copy.”

The Bail Magistrate or Bail Commissioner may utilize financial applications such as Paypal or Venmo to receive the bail from the individual under arrest or from a surety but only if the person posting the bail consents to paying money in that manner. If the person does not consent to paying bail through a financial application, the Bail Magistrate or Bail Commissioner shall go to the place of the holding authority

and conduct the release in-person. The Bail Magistrate's or the Bail Commissioner's bail checking account must be linked to the financial application to receive the bail.

If a surety is posting the bail they must be given an oath and all statutory warnings as if the oath were being conducted in-person. At the conclusion of the release, the surety shall be given the copy of the Recognizance Form marked "Surety Copy."

The Bail Magistrate or Bail Commissioner will not be entitled to a fee pursuant to G.L. c. 262, § 24 if they conduct the release of an individual on personal recognizance remotely. Bail Magistrates and Bail Commissioners employed by the Trial Court will be entitled to receive compensatory time for each remote release. Bail Magistrates and Bail Commissioners employed by the Trial Court will be entitled to receive compensatory time for each remote release, with the accrual and use of said time to be prescribed by the accompanying Transmittal.

Nothing in this order shall preclude a Bail Magistrate or Bail Commissioner from performing releases on personal recognizance or on bail in-person at police stations, houses of correction, jails, or programs operated by or for the Department of Youth Services and collecting a fee.

This order shall remain in effect until further order of the court following the end of the public emergency.

Downloads

Trial Court Emergency Administrative Order 20-6: Temporary Alternative Procedures for Bail Magistrates and Bail Commissioners Setting and Taking Bail after Court Hours during the COVID-19 Pandemic

(https://www.mass.gov/doc/trial-court-emergency-administrative-order-20-6-temporary-alternative-procedures-for-bail/download)

(PDF 541.9 KB)

REFERENCED SOURCES: Governor's Declaration of Emergency (https://www.mass.gov/media/2171956/download)

UPDATES:

Adopted effective April 1, 2020 (https://www.mass.gov/media/2114886/download)

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