Juvenile Court Standing Order 5-20

Protocol Governing Requests for Release from Detention, and Requests to Revise or Revoke or to Stay Sentence, based on Coronavirus (COVID-19) Risks

In *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, SJC-12926, issued on April 3, 2020, the Supreme Judicial Court (SJC) ordered that pretrial detainees charged with nonviolent and non-excluded offenses, who are not detained under G. L. c. 276, § 58A, and persons detained pending probation violation hearings, are entitled to a rebuttal presumption of release and to a specialized and expedited process due to risks presented by the Coronavirus (COVID-19). Other detainees may move for release, but are not subject to that presumption and process. Adjudicated youth serving sentences may move for stay pending appeal, for new trial and stay pending decision on such motion, or to revise and revoke their sentences within the time limits provided by Rule 29 of the Massachusetts Rules of Criminal Procedure. This Standing Order sets forth a protocol governing such motions filed in the Juvenile Court.

I. Detained Youth Entitled to Rebuttable Presumption of Release

A. As ordered by the SJC, pretrial detainees, and probationers held pending final probation violation hearings, are entitled to a rebuttable presumption of release if:

1. they are not being detained under G. L. c. 276, § 58A, and

2. they are not charged with a violent or serious offense listed in Appendix A of the SJC decision.

B. Motions by detainees entitled to the presumption of release shall be handled as follows:

1. Though not a party to the SJC decision, the Department of Youth Services (DYS) agrees to provide the Clerk-Magistrate with a daily report identifying detainees held at DYS for their county. The Clerk-Magistrate shall forward the report to the First Justice of the county.

2. The First Justice shall designate a primary judge, a first backup judge, and a second backup judge, if judicial assignments within the county allow for such number of designations, to address these motions as emergency matters pursuant to Juvenile Court Standing Order 3-20.

3. All motions under Section I., shall be filed with the Clerk-Magistrate by email. All motions claiming presumptive entitlement to release under the SJC decision shall so indicate by captioning the motion "Motion for release based on SJC-12926– PRESUMPTIVE RELEASE."

4. If the District Attorney and defense counsel file an agreed-upon motion, the parties shall identify the motion as such by captioning the motion "AGREED-UPON Motion for

Release based on SJC-12926–PRESUMPTIVE RELEASE." The Court may allow the motion without a hearing by endorsing the motion "allowed as agreed," or similar phrase. The clerk shall enter such endorsement on the docket. In the case of any probationer detained pending a hearing on a probation violation, the parties shall consult the Probation Service regarding any proposed release plan and/or conditions of release, and shall indicate in the agreed-upon motion that they have done so.

5. If no agreement is reached, counsel for the detained youth shall serve the motion on the Commonwealth by email immediately upon filing, and the Commonwealth shall file and serve by email its opposition, if any, within 24 hours of receiving the youth's motion. In the case of any probationer detained pending a hearing on a probation violation, the parties shall serve the motion and any opposition on the Probation Service, and shall indicate that they have done so. The Court shall hold a hearing by videoconference or telephone conference within two business days of receiving the youth's motion.

6. As directed by the SJC, the Court shall order the youth released on personal recognizance, without surety unless the Commonwealth establishes, by a preponderance of the evidence, that release would result in an unreasonable danger to the community or that the youth presents a very high risk of flight. The Court may impose conditions of release, consistent with the limitations on probation supervision and GPS restrictions provided by the SJC's Order Concerning the Imposition of Global Positioning System (GPS) Monitoring as Condition of Release or Probation (March 23, 2020) and the Trial Court Emergency Administrative Order 20-2, Order Concerning Probation Conditions as a Result of COVID-19 (March 16, 2020). Any order of release of a person who is in quarantine after a positive test for COVID-19, or while symptomatic, or due to having been in close contact with someone who has tested positive, shall take effect after completion of the period of quarantine, as provided in footnote 19 of the SJC decision.

7. Decisions on motions under this Section shall be issued promptly.

8. A youth aggrieved by the denial of a motion to reconsider bail may seek review by a single justice of the SJC, under G. L. c. 211, § 3.

II. Detainees <u>Not</u> Entitled to Rebuttable Presumption of Release

A. Pretrial detainees who are held under G. L. c. 276, § 58A, or who have been charged with a violent or serious offense listed in Appendix A of the SJC decision, are not entitled to a rebuttable presumption of release based on COVID-19 concerns. Motions by these detainees shall be addressed promptly, according, as applicable, to the protocols established by Juvenile Court Standing Order 3-20, and other applicable COVID-19 orders issued by the SJC.

B. Motions under Section II., may be filed by email, and shall be served upon the Commonwealth (by email) immediately upon filing. All motions filed under this section shall identify, prominently and on the first page, whether the youth is being detained under G. L. c. 276, § 58A, and the charge(s) pending against the youth. The Commonwealth shall be entitled to file and serve a written opposition within one calendar week of receiving the motion or such other time as the Court may order.

C. The Court may deny any motion under this section on the papers without hearing, or may conduct a hearing by videoconference or telephone conference. Decisions on motions under this section shall be issued promptly.

III. Adjudicated Juveniles and Youthful Offenders Serving Sentences

A. Though the SJC did not specifically address the issue of adjudicated juveniles or youthful offenders committed to the custody of the DYS, whether to release an adjudicated juvenile or youthful offender currently committed to the custody of DYS based on COVID-19 risks is generally a question for DYS rather than the court. Adjudicated juveniles or youthful offenders may raise a COVID-19-based request for release in the Juvenile Court: a motion to revise or revoke a sentence within the 60-day time limit of Rule 29 of the Massachusetts Rules of Criminal Procedure, or a motion to stay execution of a sentence pending an appeal or pending decision on a motion for a new trial. The following procedures govern those instances:

1. If an adjudicated juvenile or youthful offender files and serves a motion to revise or revoke the sentence, based on COVID-19 concerns, within the 60-day deadline of Rule 29, the Commonwealth shall file and serve a response to the motion within 14 days of receiving the juvenile's motion.

2. If an adjudicated juvenile or youthful offender files and serves a motion to stay execution of sentence, based on COVID-19 concerns, in connection with a pending appeal or a motion for a new trial, the Commonwealth shall file and serve a response, within 14 days of receiving the juvenile's motion.

3. The Commonwealth shall file and serve a response to a motion for a new trial within 30 days of receiving the juvenile's motion, or within such other time as the Court may order.

4. Any motion under this section may be filed and served by email, and shall be served immediately upon filing. Upon receipt of both the motion and opposition or other response, or upon expiration of the time for response provided herein or ordered by the Court, the Clerk-Magistrate shall forward the motion and response to the judge who presided at trial or imposed sentence or, if that judge is no longer on the Juvenile Court or is otherwise unavailable, to the First Justice, who will assign a judge to address the matter.

5. The Court may act on a motion filed under this section on the papers, without hearing if otherwise permitted by law, or may conduct a hearing by videoconference or by telephone conference.

So Ordered,

/s/ Amy L. Nechtem
Amy L. Nechtem
Chief Justice of the Juvenile Court

Adopted: April 6, 2020
Effective: April 6, 2020