Superior 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

Applicable to All Courts

As ordered by the Supreme Judicial Court in *Committee for Public Counsel Services v. Chief Justice of the Trial Court* (SJC-12926; April 3, 2020) (SJC decision), 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 rebuttable 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. Convicted defendants serving sentences may move for stay of sentence pending appeal; for new trial with stay of sentence pending decision on such motion; or to revise or revoke their sentences within the time limits provided by Mass. R. Crim. P. 29. This protocol governs such motions.

I. Detainees 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. When the Clerk receives the daily sheriff's report identifying detainees held in the sheriff's facility, the Clerk shall forward the report to the Regional Administrative Justice (RAJ) for the county or region, and also, in the case of Berkshire, Franklin, Hampshire, and Dukes County, to the judge currently assigned to that county.
   2. The RAJ in each county or region shall designate a session for addressing COVID-19-based motions, and shall designate a primary judge, a first backup judge, and a second backup judge to address these motions in that session. The session may be the same session that is presently addressing emergency matters pursuant to Standing Order 4-20, if the RAJ determines that such session is able to address all such matters while giving these motions priority and meeting the time requirements set forth herein and in the SJC decision.
   3. All motions under this Part I shall be filed with the Clerk by email to the clerk's office general email address, as set forth in the appendix hereto. 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 concerning 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, the defendant 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 defendant's motion. The parties shall provide the Court with the pertinent Court Activity Record Information (CARI) and a copy of the docket of each case in which the defendant is held, if available to them. In the case of any probationer detained pending a hearing concerning 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 defendant's motion.
6. As directed by the SJC, the Court shall order the defendant 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 individual 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 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 the SJC decision at footnote 19.
7. Decisions on motions under this Part I shall be issued promptly.
8. A detainee 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 to the protocols established by Superior Court Standing Order 4-20, and other COVID-19 orders issued by the SJC, as applicable.

B. Motions under this Part II may be filed by email to the clerk's office general email address, and shall be served upon the Commonwealth, by email, immediately upon filing. All motions filed under this Part II shall identify, prominently and on the first page, whether the defendant is being detained under G. L. c. 276, § 58A, and the charge(s) pending against the defendant.

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 Part II on the papers without a hearing, or may conduct a hearing by videoconference or telephone conference. Decisions on motions under this Part II shall be issued promptly.

III. Convicted defendants serving sentences

A. As determined by the SJC, whether to release a defendant currently serving a sentence because of COVID-19 risks is generally a question for the Parole Board rather than the court. That said, there are two instances when a convicted defendant may raise a COVID-19-based request for release in the Superior Court: a motion to revise or revoke a sentence within the 60-day time limit of Mass. R. Crim. P. 29, or a motion to stay execution of a sentence pending either an appeal or a decision on a motion for a new trial. The following procedures govern those instances.
    1. If a defendant files and serves a motion to revise or revoke the sentence based on COVID-19 concerns within the 60-day deadline of Mass. R. Crim. P. 29, the Commonwealth shall file and serve a response within 14 days of receiving the defendant's motion, or within such other time as the Court may order.
    2. If the defendant files and serves a motion to stay execution of sentence, based on COVID-19 concerns, in connection with a pending appeal or motion for a new trial, the Commonwealth shall file and serve a response within 14 days of receiving the defendant's motion, or within such other time as the Court may order.
    3. The Commonwealth shall file and serve a response to a motion for a new trial within 30 days of receiving the defendant's motion, or within such other time as the Court may order.
    4. Any motion under this Part III may be filed by email to the clerk's office general email address, and shall be served by email 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 shall forward the motion and response to the judge who presided at trial or who imposed sentence or, if that judge is no longer on the Superior Court or is otherwise unavailable, to the RAJ, who will assign a judge to address the matter.

5. The Court may act on a motion filed under this Part III on the papers, without hearing if otherwise permitted by law, or may conduct a hearing by videoconference or by telephone conference. In the case of a motion to revise or revoke a sentence so as to permit release, the Court shall treat the motion as a waiver of the right to physical presence at the time of any re-sentencing that results in earlier release than would have resulted from the original sentence.

So Ordered,

/s/ Judith Fabricant

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Judith Fabricant
Chief Justice of the Superior Court

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

Appendix to Superior Court Standing Order 5-20

Superior Court Clerk's Offices General Email addresses:

Barnstable County Superior Court	barnstablesuperiorcourtclerk@jud.state.ma.us
Berkshire County Superior Court	berkshire.clerksoffice@jud.state.ma.us
Bristol County Superior Court	bristol.clerksoffice@jud.state.ma.us
Dukes County Superior Court	dukes.clerksoffice@jud.state.ma.us
Essex County Superior Court	essex.clerksoffice@jud.state.ma.us
Franklin County Superior Court	franklinclerksoffice@jud.state.ma.us
Hampden County Superior Court	hampden.clerksoffice@jud.state.ma.us
Hampshire County Superior Court	hampshire.clerksoffice@jud.state.ma.us
Middlesex County Superior Court	middlesex.clerksoffice@jud.state.ma.us
Nantucket County Superior Court	nantucket.clerksoffice@jud.state.ma.us
Norfolk County Superior Court	norfolk.clerksoffice@jud.state.ma.us
Plymouth County Superior Court	plymouth.clerksoffice@jud.state.ma.us
Suffolk Criminal Superior Court	suffolkcriminal.clerksoffice@jud.state.ma.us
Worcester County Superior Court	worcester.clerksoffice@jud.state.ma.us