District Court Standing Order 4-20

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

Pursuant to the Order of the Supreme Judicial Court in *Committee for Public Counsel Services & another v. Chief Justice of the Trial Court and others*, SJC No. 12926 (April 3, 2020), all pretrial detainees who are not charged with an offense listed in Appendix A of *CPCS*, and who are not being held without bail subsequent to a determination of dangerousness under G.L. c. 276, § 58A, as well as individuals who are being held pending a final probation violation hearing, shall be entitled to rebuttable presumption of release and an expedited hearing on their motions for reconsideration of bail and detention. Other detainees may move for release, but are not subject to that presumption and process.

I. Designated Sessions

A special Covid-19 Emergency Bail and Detention Review Session (Session) for the review and hearing of emergency motions for reconsideration of orders of pretrial detention and detention pending a probation violation hearing as set forth in § II.A & § II.B. below shall be established in each county, effective April 6, 2020. Pursuant to *CPCS*, I have designated in each county an assigned primary judge, a first backup judge, and a second backup judge to hear and promptly decide such motions. A list of the assigned judges and designations are attached as an appendix hereto. The primary judge designated in each county shall establish a schedule for the sitting of judges assigned to their county's session. Additional judges designated to hear these motions may be assigned if circumstances warrant.

A clerk or assistant clerk and a probation officer, and necessary backups, shall be specially assigned to each session. The clerk assigned to the Session will have remote MassCourts access to all of the county's courts in order to facilitate docketing of the motions and issuing any process to the correctional facilities. The clerk shall record all videoconference and telephonic conference call hearings and shall forward all motions to the original division at the conclusion of these proceedings. The probation officer will provide access to CARI records for detainees as needed.

II. Motions for reconsideration of bail and detention pending a probation violation hearing

A. Detainees entitled to rebuttable presumption of release

1. As ordered by the Supreme Judicial Court in *CPCS*, pretrial detainees, and probationers held pending final probation violation hearings, are entitled to a rebuttable presumption of release if:

    a. they are not being detained under G. L. c. 276, § 58A, and
    b. they are not charged with a violent or serious offense listed in Appendix A of *CPCS*.

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

i. When the clerk of the Session receives the daily sheriff's census report identifying detainees held in the sheriff's facility, the clerk shall forward the report to the primary judge, first backup judge, and second backup judge for that county's Session.

ii. All motions under this section shall be filed with the clerk of the Session by email to the email address as set forth in the appendix hereto. The email subject line should contain the case name, docket number, and "motion for release based on SJC-12926." All motions claiming presumptive entitlement to release under *CPCS* shall so indicate by captioning the motion "Motion for release based on SJC-12926 -- PRESUMPTIVE RELEASE." A copy of the motion and attachments shall be served contemporaneously via email to the District Attorney and the Probation Department.

All motions for COVID-19 Emergency Bail and Detention Review shall contain the following: (1) the identity of the defendant or probationer; (2) the current bail or detention status; (3) affirmation that the defendant or probationer consents to the motion; (4) that the defendant is not charged with an offense set forth in Appendix A to CPCS, held on a revoked bail, or held pursuant to G.L. c. 276, § 58A; (5) certification that the defendant has not tested positive for or is symptomatic of COVID-19 or is in quarantine for having come into contact with someone who tested positive for COVID-19; (6) certification that the attorney conferenced the matter with the prosecutor; (7) any agreement of the parties; and (8) the email address of the filer. Any police report, criminal history record (if available), and other documents on which counsel is relying shall be filed with the motion. The parties shall get the input of Probation regarding any agreed motion for release that involves probation supervision prior to filing any motion.

iii. If the District Attorney and defense counsel file an agreed-upon motion, the motion shall be identified by captioning the motion "AGREED-UPON Motion for Release based on SJC-12926 -- PRESUMPTIVE RELEASE." The judge may allow the motion without a hearing by endorsing the motion "allowed as agreed," or similar phrase. The clerk shall immediately forward the written order to the detention facility and the parties.

iv. If no agreement is reached, the Commonwealth shall file and serve by email its opposition, if any, within one business day of receiving the defendant's motion.

v. In all contested motions, the clerk shall schedule a hearing that shall be held by video conference or telephonic conference call not more than two business days from the filing of the emergency motion. In addition to the information contained in the filings, the judge may consider any additional evidence as deemed appropriate. The defendant's presence shall not be required during the videoconference or telephonic conference call.

vi. As directed by the Supreme Judicial Court, and unless held by other process, the judge shall order the defendant released forthwith, 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 judge may impose conditions of release, consistent with the limitations on probation supervision and GPS restrictions provided by the Supreme Judicial Court'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).

vii. Decisions on these motions shall be issued promptly.

viii. A detainee aggrieved by the denial of a presumptive release motion to reconsider bail may seek review by a single justice of the Supreme Judicial Court under G. L. c. 211, § 3.

B. Detainees <u>not</u> entitled to rebuttable presumption of release

1. Pretrial detainees who are held under G. L. c. 276, § 58A, have been charged with a violent or serious offense listed in Appendix A of *CPCS*, or whose bail has been revoked are not entitled to a rebuttable presumption of release based on COVID-19 concerns. Motions by these detainees shall be filed with the clerk of the Session by email to the email address as set forth in the appendix hereto, and shall be served upon the Commonwealth, by email, immediately upon filing. All motions filed under this Part II should be in the same format as set forth in § II.A.2.ii., shall be captioned "Motion for Release based on SJC-12926 – NON-PRESUMPTIVE RELEASE, and 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, or that bail that has been revoked. 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.

2. The judge of the Session shall address these motions according to the protocols established by District Court Standing Order 4-20, and other COVID-19 orders issued by the Supreme Judicial Court, as applicable.

3. The judge of the Session may deny any motion under this Part II.B. on the papers without a hearing, or may conduct a hearing by videoconference or telephone conference. Decisions on motions under this Part II.B. shall be issued promptly. The defendant's presence shall not be required during the videoconference or telephonic conference call

C. Violations of release order

1. An arrest warrant may issue for violations of release orders based on motions from the Commonwealth or the Probation Department based on a showing of probable cause that a condition of release was violated or that a new criminal offense was committed.

2. Motions to revoke a release order may be filed in either the Session or the session of the Division of the District Court in which the complaint was issued.

3. Such motions shall be addressed promptly and considered as a motion to revoke bail for violation of conditions of release.

III. Convicted defendants serving sentences not to be heard in Session

Motions to stay a sentence pending appeal or to revise and revoke a sentence pursuant to Mass. R. Crim. P. 29 shall not be filed in the Session; such motions shall be filed in and reviewed by the division in which the defendant was sentenced.

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.

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. 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. 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.

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 otherwise unavailable, to the First Justice of the division, who will assign a judge to address the matter.

The judge 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.

This Order is effective April 6, 2020 until further Order of the Court.

So Ordered,

/s/ Paul C. Dawley
Paul C. Dawley
Chief Justice of the District Court

Adopted: April 6, 2020

Appendix to District Court Standing Order 4-20

District Court email addresses for each county's designated Sessions

Barnstable Session -- BarnstableDCRelease@jud.state.ma.us
Berkshire Session -- BerkshireDCRelease@jud.state.ma.us
Bristol Session -- BristolDCRelease@jud.state.ma.us
Essex Session -- EssexDCRelease@jud.state.ma.us
Franklin Session -- FranklinDCRelease@jud.state.ma.us
Hampden Session -- HampdenDCRelease@jud.state.ma.us
Hampshire Session -- HampshireDCRelease@jud.state.ma.us
Middlesex Session -- MiddlesexDCRelease@jud.state.ma.us
Norfolk Session -- NorfolkDCRelease@jud.state.ma.us
Plymouth Session -- PlymouthDCRelease@jud.state.ma.us
Suffolk Session -- SuffolkDCRelease@jud.state.ma.us
Worcester Session -- WorcesterDCRelease@jud.state.ma.us

District Court designated judges assigned to hear motions for release

County	**Judges** 1. Primary 2. First back up 3. Second back up
Barnstable, Dukes, Nantucket	1. Hon. Therese Wright 2. Hon. Thomas Barrett 3. Hon. John Julian
Berkshire	1. Hon. Paul Smyth 2. Hon. Paul Vrabel 3. Hon. Jennifer Tyne
Bristol	1. Hon. Kevan Cunningham 2. Hon. Kevin Finnerty 3. Hon. Daniel O'Shea
Essex	1. Hon. Robert Brennan 2. Hon. Lynn Rooney 3. Hon. Ina Howard-Hogan
Franklin	1. Hon. William Mazanec 2. Hon. Laurie MacLeod 3. Hon. Mark Pasquariello
Hampden	1. Hon. John Payne 2. Hon. Patrick Sabbs 3. Hon. Matthew Shea

Hampshire	1. Hon. Maureen Walsh 2. Hon. Jacklyn Connly 3. Hon. Bruce Melikian
Middlesex	1. Hon. Stacey Fortes 2. Hon. David Frank 3. Hon. Sarah Ellis
Norfolk	1. Hon. Mark Coven 2. Hon. Daniel O'Malley 3. Hon. Thomas Finigan
Plymouth	1. Hon. James Sullivan 2. Hon. Michael Vitali 3. Hon. Shelby Smith
Suffolk	1. Hon. Matthew Machera 2. Hon. Matthew Nestor 3. Hon. Cesar Archilla
Worcester	1. Hon. David Despotopulos 2. Hon. Jennifer Ginsburg 3. Hon. Mark Noonan

Appendix A.

EXCLUDED OFFENSES

1. Any crime punishable by imprisonment in a State prison that (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson, or kidnapping; or (iii) involves the use of explosives. See G. L. c. 140, § 21; G. L. c. 276, § 58A. This includes, but is not limited to, the following offenses: murder (G. L. c. 265, § 1); manslaughter (G. L. c. 265, § 13); mayhem (G. L. c. 265, § 14); assault with the intent to murder or maim (G. L. c. 265, § 15); assault and battery by means of a dangerous weapon (G. L. c. 265, §§ 15A, 15B, 15C); strangulation (G. L. c. 265, § 15D); assault and battery or attempt by discharge of firearm (G. L. c. 265, §§ 15E, 15F); attempted murder (G. L. c. 265, § 16); armed robbery (G. L. c. 265, § 17); assault with the intent to rob or murder (G. L. c. 265, § 18); armed assault in a dwelling (G. L. c. 265, § 18A); use of a firearm in the commission of a felony (G. L. c. 265, § 18B); home invasion (G. L. c. 265, § 18C); unarmed robbery (G. L. c. 265, § 19); and stealing by confinement (G. L. c. 265, § 21);

2. Any crime involving allegations of domestic violence, including assault or assault and battery on a family member (G. L. c. 265, § 13M); violation of an abuse prevention order

under the provisions of G. L. c. 209A, and all violations of harassment prevention orders issued pursuant to G. L. c. 258E;

3. Intimidation of witnesses, jurors, or persons furnishing information in connection with criminal proceedings (G. L. c. 268, § 13B);

4. Any third or subsequent violation of driving while under the influence (G. L. c. 90, § 24) within ten years of the previous conviction for such violation;

5. Motor vehicle homicide or manslaughter while operating a motor vehicle (G. L. c. 90, § 24G, and G. L. c. 265 § 13 1/2);

6. All offenses punishable by a minimum mandatory sentence involving illegal possession of a firearm, machine gun, sawed off shotgun, large capacity weapon, or feeding device (G. L. c. 269, § 10);

7. The following sex offenses: aggravated rape (G. L. c. 277, § 39); rape (G. L. c. 265, § 22); rape of a child under the age of sixteen with force (G. L. c. 265, § 22A); aggravated rape of a child under the age of sixteen with force (G. L. c. 265, § 22B); rape and abuse of a child (G. L. c. 265, § 23); aggravated rape and abuse of a child (G. L. c. 265, § 23A); assault with intent to commit rape (G. L. c. 265, § 24); assault of a child with intent to commit rape (G. L. c. 265, § 24B); kidnapping of a child (G. L. c. 265, § 26); indecent assault and battery on a child under the age of fourteen (G. L. c. 265,

§ 13B); aggravated indecent assault and battery on a child under the age of fourteen (G. L. c. 265, § 13B 1/2); indecent assault and battery on an intellectually disabled person (G. L. c. 265, § 13F); indecent assault and battery on a person age fourteen or over (G. L. c. 265, § 13H); enticing a child under the age of sixteen for the purposes of committing a crime (G. L. c. 265, § 26C), enticing a child under the age of eighteen via electronic communication to engage in prostitution, human trafficking or commercial sexual activity (G. L. c. 265, § 26D); trafficking of persons for sexual servitude (G. L. c. 265, § 50); a second or subsequent violation of human trafficking for sexual servitude (G. L. c. 265, § 52); enticing away a person for prostitution or sexual intercourse (G. L. c. 272, § 2); drugging persons for sexual intercourse (G. L. c. 272, § 3); inducing a minor into prostitution (G. L. c. 272, § 4A); living off or sharing earnings of a minor prostitute (G. L. c. 272, § 4B); incestuous marriage or intercourse (G. L. c. 272, § 17); posing or exhibiting a child in a state of nudity (G. L. c. 272, § 29A); and unnatural and lascivious acts with a child under sixteen (G. L. c. 272, § 35A);

8. Any violation involving trafficking in cocaine or heroin in excess of 200 grams (G. L. c. 94C, § 32 [b] [4], [c] [4]; or trafficking in fentanyl or carafentanil G. L. c. 94C, § 32 [c 1/2], [c 3/4]); and

9. All attempts, conspiracies, or accessories after the fact of the aforementioned offenses.