

## **Boston Municipal Court Standing Order 5-20: COVID-19 Designated Session**

I hereby issue this Standing Order in response to the Supreme Judicial Court's decision in CPCS and another v. Chief Justice of the Trial Court and others, No. SJC-12926 (April 3, 2020) (CPCS) which states 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 rebuttable presumption of release and to a specialized and expedited process, due to risks presented by the Coronavirus (COVID-19). The purpose of this Order is to establish the Designated Sessions to hear those cases and to outline how the decision will be implemented in the Boston Municipal Court Department (BMC.) Unless specifically set forth in the CPCS decision, all existing statutes, court rules, and case law shall continue to apply to all matters in the Designated Session.

### **I. Designated Session for Pre-trial Detainees**

#### **A. Personnel Assigned**

1. The Chief Justice of the Boston Municipal Court will assign a Primary Justice, a Backup Justice, and a Secondary Backup Justice to preside over the Designated Session. More than one Designated Session may be open as need dictates.
2. The Chief Justice, after consultation with the Clerk Magistrates, will assign an Assistant Clerk Magistrate as the Designated Session Clerk and other Assistant Clerk Magistrates as backups for the Session, as necessary, to assist the Justices sitting in the Designated Session.
3. The Commissioner of Probation will assign probation officers, as needed, to provide support to the Designated Sessions.

#### **B. Filing of Motions**

1. The judges assigned to the Designated Session shall consider all motions to reconsider a) bail or conditions of release for individuals in custody or b) probation violation detentions, filed pursuant to the CPCS decision regardless of the Division of the Boston Municipal Court the complaint was issued in.
2. The parties shall file all appropriately captioned motions and related materials by email and serve a complete copy on the Probation Department at [kailey.tirabassi@jud.state.ma.us](mailto:kailey.tirabassi@jud.state.ma.us). 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." 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."
3. The motion shall identify the precise relief requested and shall include, to the extent possible 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.

4. If the motion is objected to, the Commonwealth shall file a brief opposition setting forth its argument(s) and shall include any additional supporting documentation within 24 hours of the defendant's filing.
5. If the motion is agreed to, a joint motion shall be filed, signed by both parties, describing all factors in support of the release of the defendant, along with all documents required under Section I.B.3. The parties shall include Probation's position and consult with Probation regarding any agreed conditions of release that will require probation supervision prior to filing any motion.
6. Any motion filed by the Commonwealth in a case that involves a named victim shall include the position of the victim, if available, or the efforts the Commonwealth has made to get victim input as required by G.L. c. 258B.
7. Motions, and any supporting documents, shall be served on all parties electronically.

#### C. Hearing

1. The Clerk shall schedule a hearing within two business days of the filing of the motion. All hearings shall be conducted remotely by either telephone or videoconference.<sup>1</sup> The presiding judge, in their discretion, may consider any further information proffered by the parties during a hearing.
2. The Designated Session Clerk shall provide the involved Sheriff(s) with a daily list of the hearings to facilitate the appearance of the defendant at the hearing by telephone or video. The defendant may request their presence be waived.
3. Joint Motions may be allowed without a hearing in the discretion of the presiding judge.
4. In ruling on any motion, the presiding judge shall consider the presumptions and factors set forth the CPCS decision, as well as any COVID-19 Orders of the Supreme Judicial Court, The Executive Office of the Trial Court and the Boston Municipal Court.
5. The Probation Department shall be permitted to provide input to the presiding judge on any decision bearing on their supervision of a defendant. Pursuant to CPCS, a ruling on the decision shall be issued promptly.
6. The Designated Session Clerk shall promptly notify the parties and the custodial institution of the court's decision electronically.
7. The Designated Session Clerk shall ensure that docket entries are made as soon as practicable after the resolution of a matter by the Designated Sessions.

#### D. Appeals

1. If any party seeks review under G.L. c.211, §3 of any order issued by a judge of the Designated Session, they shall provide a copy of the petition filed with the Single Justice Clerk to the Clerk of the Designated Session.

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<sup>1</sup> The Designated Session Clerk shall make every effort to ensure that the hearings are recorded.

2. The Designated Session Clerk shall transmit all relevant findings to the Single Justice Clerk upon being notified of the petition.

E. Violations of release orders

1. Any judge may issue arrest warrants for violations of release orders issued by the Designated Session judge 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 crime was committed.
2. Motions to rescind a release order allowed by a Designated Session judge shall be filed in the Designated Session and addressed by the judge who entered the release order, if possible.
3. Motions to rescind release orders shall be addressed promptly.

II. Post-disposition cases not to be heard in Designated Session

- A. Motions to revise and revoke sentences filed pursuant to Mass. R. Crim. P. 29 and motions to stay the execution of sentences pending appeal pursuant to Mass. R. Crim. P. 31 shall continue to be filed in their appropriate Divisions and heard by the sentencing judge, or the First Justice's designee if the sentencing judge is not available. Parties filing such motions may seek to be heard on an expedited basis in light of the COVID-19 State of Emergency and shall be conducted by telephone or videoconference. These motions may be ruled on by the court with or without a hearing in the discretion of the presiding judge.
- B. 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.
- C. 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.
- D. In the case of a motion to revise or revoke a sentence that seeks immediate 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.

Any deviation from this Order must be sought from the Chief Justice of the Boston Municipal Court.

This Order is effective April 6 and shall remain in effect until further order of this Court.

This Standing Order shall be posted on the judiciary's "Court System Response to COVID-19" webpage, which is located at <https://www.mass.gov/guides/court-system-response-to-covid-19>.

/s/ Roberto Ronquillo, Jr.

Hon. Roberto Ronquillo, Jr.

Chief Justice of the Boston Municipal Court

Promulgated: April 6, 2020

Effective: April 6, 2020