

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

SUFFOLK, ss.

**SJC No. DAR-
App. Ct. No. 2026-P-1070**

**COMMONWEALTH OF MASSACHUSETTS
APPELLEE**

V.

**MICHAEL WORNUM
APPELLANT**

**ON APPEAL FROM A REPORT OF QUESTIONS OF LAW
PURSUANT TO MASS. R. CRIM. P. 34**

APPLICATION FOR DIRECT APPELLATE REVIEW

**JOHN P. WARREN
Law Office of John P. Warren
132 Lincoln Street, Suite 5L
Boston, MA 02111
BBO #685597
(617) 383-4482
*john@johnpwarrenlaw.com***

September 30, 2026

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REQUEST AND REASONS
FOR DIRECT APPELLATE REVIEW

Each day, in arraignment sessions throughout Massachusetts, judges routinely hear G.L. c. 276, § 58B motions to revoke the bail of a defendant alleged to have committed a new offense, or violated conditions, while on pretrial release. The prospect of liberty deprivation at a § 58B hearing is substantial: presumptively innocent individuals may be detained for up to 90 days – and often for much longer, because periods of detention under § 58B are tolled by the speedy-trial rule.

Eight years ago, this Court *sua sponte* raised a red flag with respect to the constitutionality of one aspect of § 58B: the “rebuttable presumption” of detention for defendants alleged to have committed a new offense while on pretrial release under G.L. c. 276, § 58. *Josh J. v. Commonwealth*, 478 Mass. 716, 723, n.7 (2018) (questioning whether § 58B’s “rebuttable presumption” is “constitutional” where it “may be difficult to reconcile with the presumption recognized in § 58 that an individual will be released on bail or personal recognizance”). Indeed, our pretrial detention regime – i.e., cash bail under § 58; dangerousness under § 58A; revocation under § 58 – generally presumes *release*. See also *Brangan v. Commonwealth*, 477 Mass. 691, 704 (2017), quoting *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (“in our society liberty is the

norm, and detention prior to trial or without trial is the carefully limited exception”). But § 58B flips that presumption on its head: § 58B puts the burden on a defendant to rebut the presumption of *detention*. This presumption holds true even for defendants facing minor charges. Given the strict and narrow limitations that due process imposes on pretrial detention regimes, the *Josh J.* Court’s concern regarding the constitutionality of § 58B’s rebuttable presumption was well-placed.

But the issue was not argued – and, thus, was not decided – in *Josh. J.* See 478 Mass. at 723 n.7. And despite the regularity with which § 58B hearings are held in our trial courts, eight years later, the issue remains unresolved.

This issue – left open by the *Josh J.* Court – is squarely raised in the instant appeal: Boston Municipal Court Judge Dana Pierce has reported, under Mass. R. Crim. P. 34, the question of whether § 58B’s “rebuttable presumption” is constitutional.¹

The issue should be addressed by this Court: it is an unresolved question regarding the constitutionality of a provision in a bail revocation statute that has significant implications on the liberty of presumptively innocent defendants. And it bears on the burden of proof to be applied

¹ Judge Pierce’s “Report of Questions of Law Pursuant to Mass. R. Crim. P. 34” is included in the addendum, cited herein as “Add.page.”

at § 58B hearings, which, as Judge Pierce noted, are held with frequency in the trial courts. (Add.32). Moreover, this Court is best positioned to navigate the statutory implications of a potential ruling that § 58B’s “rebuttable presumption” is unconstitutional.

Direct appellate review is also warranted to answer the second question posed by Judge Pierce. *Josh J.* established that “the Commonwealth may seek to revoke bail under *either* § 58 *or* § 58B” when there is probable cause to believe the individual committed a crime while on release. *Josh J.*, 478 Mass. at 716 (emphasis added). But Judge Pierce’s second reported question asks whether a defendant’s bail may be properly revoked under *both* § 58 *and* § 58B simultaneously. (Add.32). This procedural question is not insignificant given the disparate bail revocation outcomes provided in each statute: § 58 provides for a fixed 60-day detention period, whereas § 58B allows for an indeterminate 90-day detention period. Requiring a reasoned choice of § 58 or § 58B detention – i.e., the “either/or” approach suggested by *Josh J.* – comports with the due process principle that the deprivation of an individual’s pretrial liberty is no greater than necessary. See, e.g., *Brangan*, 477 Mass. at 705. This second reported question also merits this Court’s consideration.

Moreover, this Court should not be dissuaded from granting direct review on the grounds that this appeal is moot

as to Mr. Wornum – who has since been released from custody, his bail revocation periods having expired. Indeed, Judge Pierce forecasted as much, but nevertheless reported the questions of law because they arise with frequency in the trial courts, involve constitutional issues, and are otherwise “likely to evade appellate review” because they concern pretrial detention and release, and at least to some extent circumscribed statutory periods that may elapse before an appeal is heard. See Add.32, citing *Mendonza v. Commonwealth*, 423 Mass. 771, 779-779 (1996) (resolving important issues of pretrial detention that, due to temporal limitations, would otherwise evade review).

To address these important, unsettled legal issues concerning bail revocation under § 58B – which include important constitutional questions – this Court should grant direct appellate review under Mass. R.A.P. 11.

**PRIOR PROCEEDINGS, STATEMENT OF FACTS &
REPORTED QUESTIONS**

On May 14, 2026, in the Roxbury Division of the Boston Municipal Court, Mr. Wornum was arraigned on a new complaint, docket no. 2602 CR 1074, charging distribution of a class B substance (count 1); possession with intent to distribute a class B substance (count 2); and distribution of a class B substance, subsequent offense (count 3). (Add.31).

At the time of his arraignment on the new complaint,

Mr. Wornum had four pending cases: two cases in the Roxbury Division and two in Suffolk Superior Court. (Add.31).²

At Mr. Wornum's arraignment, the Commonwealth filed two separate motions to revoke his bail in all four of his pending cases: (1) for 60 days pursuant to G.L. c. 276, § 58; and (2) for 90 days pursuant to G.L. c. 276, § 58B. (Add.31). The Court (Pierce, J.) allowed both motions. (Add.31). Bail hearings were scheduled at the expiration of the 60-day and 90-day revocation periods in the Roxbury Division (July 10, 2026 and August 11, 2026) and in Suffolk Superior Court (July 9, 2026 and August 10, 2026). (Add.24).

On June 30, 2026, Mr. Wornum filed a motion to reconsider and vacate the 90-day bail revocation orders issued under § 58B. In the motion, he argued, *inter alia*, that § 58B's "rebuttable presumption" of detention was unconstitutional and that it was improper to revoke Mr. Wornum's bail under *both* § 58 *and* § 58B. (Add.31-32).

On July 10, 2026, Judge Pierce held a hearing on Mr. Wornum's motion to reconsider. (Add.32). Judge Pierce declined to vacate her § 58B revocation orders. (Add.32). However, on July 22, 2026, Judge Pierce issued the Report of

² The two pending Roxbury Division cases, 2502 CR 1865 and 2502 CR 1866, both involved drug distribution accusations. The two pending cases in Suffolk Superior Court, 2584 CR 566 and 2684 CR 16, both involved possession of a firearm. None of the four pending cases involved any charges for violent or assaultive offenses.

Questions of Law Pursuant to Mass. R. Crim. P. 34, reporting the following questions of law to the Appeals Court:

1. Whether the rebuttable presumption of revocation provided for in Section 58B upon a finding of probable cause the defendant committed a new offense is constitutional, considering the presumption in favor of bail and personal recognizance in Section 58?
2. Whether a defendant's bail must be revoked under "either § 58 or § 58B" if the Commonwealth meets its burden under both statutes? In other words, if the Commonwealth meets its burden for revocation under both statutes, can a defendant's bail be revoked under both statutes?

(Add.31-32). Judge Pierce wrote: "The Court reports these questions because they involve legal issues raised before it on a frequent basis that bear on the possible length of a defendant's pretrial detention." (Add.32). She continued: "Additionally, the first question set out above raises a constitutional issue identified by the [SJC in *Josh J.*] over eight years ago, and is likely to evade appellate review as it involves bail and pretrial release." Add.32, citing *Mendonza*, 423 Mass. at 777.

On July 23, 2026, the case was entered in the Appeals Court (docket # 2026-P-1070). Mr. Wornum has not yet filed his appellant brief, which is due November 2, 2026.

In August 2026, the bail revocation orders having expired, Mr. Wornum was released from custody. Mr.

Wornum currently remains out-of-custody, on release on Roxbury Division docket no. 2602 CR 1074 and Suffolk Superior Court docket no. 2684 CR 16. The other three involved cases – Roxbury Division docket nos. 2502 CR 1865 and 2502 CR 1866, and Suffolk Superior Court docket no. 2584 CR 566 – have all resolved in Mr. Wornum’s favor with dismissal or *nolle prosequi*.³

ISSUES PRESENTED

The issues in this appeal are squarely presented by Judge Pierce’s reported questions of law, restated here:

1. Whether the rebuttable presumption of revocation provided for in Section 58B upon a finding of probable cause the defendant committed a new offense is constitutional, considering the presumption in favor of bail and personal recognizance in Section 58?
2. Whether a defendant’s bail must be revoked under “either § 58 or § 58B” if the Commonwealth meets its burden under both statutes? In other words, if the Commonwealth meets its burden for revocation under both statutes, can a defendant’s bail be revoked under both statutes?

³ Roxbury Division docket nos. 2502 CR 1865 and 2502 CR 1866 were nol prossed by the Commonwealth on August 10, 2026. As to Suffolk Superior Court docket no. 2584 CR 566, on September 14, 2026, following the allowance of a suppression motion, the Court (Ham. J.) ordered that it “will dismiss this case” but – due to a unique procedural issue – will do so after she issues findings based on a hearing that took place on September 29, 2026.

(Add.32). These issues were raised and preserved in the Roxbury Division through Mr. Wornum’s motion to reconsider the § 58B bail detention orders, which prompted Judge Pierce to report the questions of law, pursuant to Mass. R. Crim. P. 34.

ARGUMENT

I. This Court should decide, on direct review, whether § 58B’s “rebuttable presumption” of detention is constitutional – an important question concerning the burden of proof under the oft-used bail revocation mechanism.

In *Josh J. v. Commonwealth*, 478 Mass. 716, 724 (2018), this Court considered the dual bail revocation mechanisms established by G.L. c. 276, § 58 (60-day revocation), and § 58B (90-day revocation). The *Josh J.* Court rejected, generally, the defendant’s due process challenges to § 58 and § 58B. *Id.* at 720-724. However, the SJC expressed skepticism with the constitutionality of one aspect of § 58B: the statute’s “rebuttable presumption” that “no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.” See *id.* at 723, n. 7, citing § 58B.

More specifically, this Court stated: “The parties did not argue, and we do not decide, whether the rebuttable presumption in § 58B is constitutional in the context of a

revocation under § 58B when bail was granted under § 58.” *Id.*, citing § 58B. “We note, however” – the *Josh J.* Court continued – “that the rebuttable presumption in § 58B may be difficult to reconcile with the presumption recognized in § 58 that an individual will be released on bail or personal recognizance.” *Id.*, citing *Delaney v. Commonwealth*, 415 Mass. 490, 495 (1993).

Judge Pierce’s first reported question squarely presents the issue left open by this Court in *Josh J.*: whether § 58B’s “rebuttable presumption” is unconstitutional.

The concern voiced by this Court in *Josh J.* was warranted: § 58B’s rebuttable presumption poses significant due process concerns. Starting with first principles, the Fourteenth Amendment and arts. 1, 10, and 12, establish a “fundamental right to liberty and freedom from physical restraint that cannot be curtailed without due process of law.” *Brangan v. Commonwealth*, 477 Mass. 691, 703 (2017). See also *Walsh v. Commonwealth*, 485 Mass. 567, 582-583 (2020) (citation omitted) (“As a general principle, decisions about pretrial release and detention should be governed by ‘the Commonwealth’s policy of limiting pretrial restrictions on liberty’” – a policy “based in part on constitutional principles”).

To comply with constitutional mandates, pretrial detention mechanisms are analyzed under two aspects of due

process: substantive and procedural. *Brangan*, 477 Mass. at 703. To survive the substantive due process test, “where a right deemed to be ‘fundamental’ is involved, courts must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation ... and typically will uphold only those statutes that are narrowly tailored to further a legitimate and compelling governmental interest.” *Id.* (cleaned up; citations omitted). Procedural due process, meanwhile, requires additionally that governmental action “depriving a person of life, liberty, or property ... must still be implemented in a fair manner.” *Id.* (citations omitted).

Section 58B’s “rebuttable presumption” fails under both due process requirements.

Under our overarching pretrial detention regime, the “presumption” is that a defendant will be “admitted to bail on personal recognizance.” *Commonwealth v. Pagan*, 445 Mass. 315, 322 (2005). See *Mendonza v. Commonwealth*, 423 Mass. 771, 774 (1996). (“The preferred pretrial disposition is release on personal recognizance”). From that initial presumption, pretrial detention is only warranted under “carefully” delineated circumstances. *Id.* Monetary bail may be set under § 58, but it must be “no higher than necessary to ensure the defendant’s appearance” in court. *Brangan*, 477 Mass. at 701. Dangerousness and deterrence of future crime cannot be

the basis for conditions of release imposed under § 58. See *Commonwealth v. Norman*, 484 Mass. 330, 338 (2020). The dangerousness statute, G.L. c. 276, § 58A, which is applicable only to a subset of predicate offenses, requires the Commonwealth to establish by clear and convincing evidence that “no conditions of release will reasonably assure the safety of any other persons.” *Mendoza*, 423 Mass. at 774, citing § 58A. The onus for detention under § 58 and § 58A is strictly on the government. Moreover, even when a defendant has been charged with a new offense while on release, § 58 – which provides for a 60-day detention period – requires the Commonwealth to establish that “the release of said person will seriously endanger any person or the community and that the detention of the person is necessary to reasonably assure the safety of any person or the community.” G.L. c. 276, § 58. See *Josh J.*, 478 Mass. at 716.

But § 58B flips the general presumption of release in our pretrial detention regime on its head. Under § 58B, where a defendant has been charged with a new crime while on release, a defendant is presumed *detained*, and the burden is placed on the defendant to rebut that presumption of detention. This is true even if the person’s dangerousness was prohibited from being considered at their original arraignment under § 58, and if they have not been charged with a predicate offense under § 58A. See, e.g., *Norman*, 484

Mass. at 338. Section 58B’s presumption of detention flies in the face of our overarching pretrial detention scheme, which has been “carefully” shaped by state and federal constitutional due process requirements. See *Mendoza*, 423 Mass. at 774.

Moreover, § 58B’s rebuttable presumption of detention applies even in the context of minor offenses. A defendant released under § 58 on a minor drug possession offense, who subsequently is charged again with a minor drug possession offense, faces a presumption of *detention* under § 58B. In stark contrast, § 58A, the dangerousness statute, contains no such “rebuttable presumption,” is limited to a narrow set of predicate offenses, and requires the Commonwealth to meet its burden of detention by “clear and convincing evidence.” See § 58A, par. 3 and 4.

Consider, further, § 58B in contrast to § 58. The *Josh J.* Court acknowledged that the potential deprivation of liberty implicated by a bail revocation under either statute can be “substantial,” but determined that § 58B’s longer detention period was “support[ed]” by the “heightened ‘no conditions’ analysis under § 58B.” *Josh J.*, 478 Mass at 723 n.8. But that reasoning is undercut by § 58B’s “rebuttable presumption,” which puts the burden to establish release on the defendant, thus theoretically paving an easier road for the Commonwealth to detain under § 58B – the statute that

provides for the *longer* period of detention.

Just as the constitutional problem with § 58B’s “rebuttable presumption” is clear, so too is its origin easily understood: the root of the problem raised in Judge Pierce’s reported question traces back to a 2006 amendment to the statute. From its enactment, until March 29, 2006, bail revocations under § 58B were applicable only to individuals who had been released under § 58A, the dangerousness statute. That changed when § 58B was amended, effective March 30, 2006, to cover not only individuals released under § 58A, *but also* individuals released under § 58. Yet, despite this change in the statute’s reach, § 58B’s “rebuttable presumption” of detention remained undisturbed. Under the pre-March 2006 version of § 58B, the “rebuttable presumption” of detention was logical because the statute was solely applicable to individuals facing a new offense after having previously been: (a) charged with a § 58A predicate offense, and (b) proven dangerous by clear and convincing evidence, but released on § 58A conditions. But, untethered from § 58A, and applied to individuals released under § 58 (and § 87),⁴ § 58B’s “rebuttable presumption” is illogical – and

⁴ Section 58B was broadened further when, effective August 8, 2014, it was amended also to cover individuals released under § 42A (pretrial release for individuals charged with abuse of a family or household member), and § 87 (pretrial release supervised by the probation department).

unconstitutional.

This issue is ripe for this Court to review. It is an unsettled constitutional question, previously raised – but not addressed – by this Court. And it concerns the burden of proof to be applied under § 58B – a frequently used statute that carries the potential for a significant deprivation of liberty. Moreover, this Court is well-positioned to untangle the implications of a determination that § 58B’s rebuttable presumption is unconstitutional – including the possibility that § 58B may be deemed constitutionally valid, and thus broadly “saved,” but only in its application to individuals released under § 58A (and, perhaps, § 42A). This Court should decide the issue on direct review.

II. This Court should also decide the second reported question: whether a defendant’s bail can be properly revoked under *both* § 58 *and* § 58B.

In *Josh J.*, this Court concluded that, where (among other requirements) there is probable cause to believe that a defendant committed a crime while on release, a defendant may have his bail revoked “under *either* § 58 *or* § 58B.” *Josh J.*, 478 Mass at 719 (emphasis added). *Josh J.* thus implies an “either/or” choice for selecting an appropriate revocation statute.

But Judge Pierce’s second reported question asks whether a defendant’s bail may be properly revoked under

both § 58 *and* § 58B – as was ordered in Mr. Wornum’s case. (Add.32). The judge’s question has important implications on defendants’ pretrial liberty: as discussed *supra*, § 58 provides for a fixed 60-day detention period, whereas § 58B allows for an indeterminate 90-day detention period.

There is good reason not to depart from the procedure set out in *Josh J.*, 478 Mass at 716, i.e., that bail may be revoked under *either* § 58 *or* § 58B. Permitting the Commonwealth to move for detention under *both* statutes, in essence, grants it two bites at the apple. Meanwhile, a judge’s order revoking bail under both statutes leads to peculiar results, i.e., the scheduling of two subsequent bail hearing dates on the same case, as was ordered for Mr. Wornum.

Meanwhile, the “either/or” regime set forth in *Josh J.* has at least one significant advantage: it requires a choice concerning the appropriateness of a fixed 60-day revocation versus an indeterminate 90-day revocation, based on the circumstances presented by a particular defendant. This “either/or” regime increases the probability that the deprivation of a defendant’s liberty is constitutionally sound and lasts no longer than is necessary. See, e.g., *Brangan*, 477 Mass. at 705 (state and federal constitutions permit pretrial detention only “in carefully circumscribed circumstances and subject to quite demanding procedures”; bail must be set “no higher than necessary to ensure the defendant’s

appearance”). This is particularly true insofar as the choice between § 58 or § 58B is vested with the motion judge, who is in a better position than the Commonwealth to weigh a defendant’s liberty interests against governmental interests.

Judge Pierce’s second reported question – concerning the interplay between bail revocations under § 58 and § 58B – should be addressed by this Court.

III. Mootness should not dissuade this Court from direct review because, as Judge Pierce recognized, these are important issues, involving constitutional questions, that arise frequently but would otherwise evade appellate review.

This appeal is likely moot as to Mr. Wornum: all of the bail revocations (under both § 58 and § 58B) expired in August 2026 and Mr. Wornum was released from custody. But, as Judge Pierce reasoned, these are important questions involving constitutional law that undoubtedly recur with frequency in courts throughout the Commonwealth. (Add.32). Moreover, given the limited duration of bail revocations relative to the appellate process – again, as Judge Pierce recognized – these questions would almost certainly otherwise evade SJC review. (Add.32). Thus, just as in *Mendonza*, despite its mootness, “it is entirely appropriate that we proceed to adjudicate [the] claims” raised in this appeal. *Mendonza*, 423 Mass. at 777, citing among other cases, *Aime v. Commonwealth*, 414 Mass. 667, 670 (1993)

(notwithstanding mootness, court deciding pretrial detention issues that were “certainly of recurring importance to the administration of justice,” yet given the temporal limitations of § 58A, “would almost certainly evade review”).

CONCLUSION

This Court should grant Mr. Wornum’s application for direct appellate review to decide these important questions of law reported by Judge Pierce.

Respectfully submitted,

/s/ John P. Warren
John P. Warren, BBO #685597
Law Office of John P. Warren
132 Lincoln Street, Suite 5L
Boston, MA 02111
(617) 383-4482
john@johnpwarrenlaw.com

Date: September 30, 2026

ADDENDUM

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CRIMINAL DOCKET		DOCKET NUMBER 2602CR001074		NO. OF COUNTS 3	Trial Court of Massachusetts BMC Department		
DEFENDANT NAME AND ADDRESS Michael D Wornum 14 Judson Street Boston, MA 02125		DOB 08/05/1993		GENDER Male		COURT NAME & ADDRESS BMC Roxbury 85 Warren Street Roxbury, MA 02119-3208	
		DATE COMPLAINT ISSUED 05/14/2026					
		PRECOMPLAINT ARREST DATE 05/14/2026		INTERPRETER REQUIRED			
FIRST FIVE OFFENSE COUNTS							
COUNT	CODE	OFFENSE DESCRIPTION					OFFENSE DATE
1	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)					05/14/2026
2	94C/32A/G	DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)					05/14/2026
3	94C/32A/F	DRUG, DISTRIBUTE CLASS B, SUBSQ. OFF. c94C §32A(b)					05/14/2026
DEFENSE ATTORNEY McKinnon		OFFENSE CITY/TOWN Boston		POLICE DEPARTMENT Boston PD Area D-4			
DATE & JUDGE		DOCKET ENTRY		DATE & JUDGE		FEES IMPOSED	
5/14/26 Piere		☒ Attorney appointed (SJC R. 3:10) ☐ Atty denied & Deft. Advised per 211 D §2A ☐ Waiver of Counsel found after colloquy		5/14/26 Piere		Counsel Fee (211D § 2A(1)(2)) ☐ WAIVED \$ 150112	
		Counsel Contribution (211D § 2) ☐ WAIVED \$					
		Default Warrant Fee (276 § 30(1)) ☐ WAIVED \$					
5/14/26 Piere		Terms of release set: ☒ Bail 1K a Docket for special condition ☐ Held (276 §58A)		5/14/26 Piere		Default Warrant Arrest Fee (276 § 30 (1)(2)) ☐ WAIVED \$	
						Probation Supervision Fee (276 § 87A) ☐ WAIVED \$	
						Bail Order Forfeited	
		Arraigned and advised: ☒ Potential of bail revocation (276 §58B) ☒ Right to bail to review (276 §58) ☐ Right to drug exam (111E § 10) ☐ Inquiry made by Court under 276 § 56A		5/14/26 Piere		Advised of right to jury trial: ☐ Waiver of jury found after colloquy ☐ Does not waive	
						Abuse Allegation: ☐ C276 § 56A form filed by Commonwealth ☐ Allegation of abuse under C276 § 56A found ☐ No allegation of abuse under C276 § 56A found	
						Advised of trial rights as pro se (Dist. Ct. Supp.R.4) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)	
SCHEDULING HISTORY							
NO.	SCHEDULED DATE	EVENT	RESULT			JUDGE	TAPE START/STOP
1	05/14/2026	Arraignment	☒ Held ☐ Not Held but Event Resolved ☐ Cont'd			Piere	
2	6/5/26	PCH	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
3	7/10/26	PCH	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
4			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
5			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
6			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
7			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
8			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
9			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
10			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd				
APPROVED ABBREVIATIONS							
ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.							
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X				TOTAL NO. OF PAGES	ON (DATE)



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Michael D Wornum		DOCKET NUMBER 2602CR001074	
COUNT / OFFENSE 1 DRUG, DISTRIBUTE CLASS B c94C §32A(a)			DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 ☐ Bench Trial ☐ Jury Trial ☐ Dismissed upon: ☐ Request of Commonwealth ☐ Request of Victim ☐ Request of Defendant ☐ Failure to prosecute ☐ Other: ☐ Filed with Defendant's consent ☐ Nolle Prosequi ☐ Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT BATTERER'S FEE OTHER		SURFINE COSTS OUI §24D FEE OUI VICTIMS ASMT	
FINDING ☐ Guilty ☐ Not Guilty ☐ Responsible ☐ Not Responsible ☐ Probable Cause ☐ No Probable Cause		SENTENCE OR OTHER DISPOSITION ☐ Sufficient facts found but continued without a finding until: ☐ Defendant placed on probation until: ☐ Risk/Need or OUI ☐ Administrative Supervision ☐ Defendant placed on pretrial probation (276 §87) until: ☐ To be dismissed if court costs / restitution paid by:			
		FINAL DISPOSITION		JUDGE	DATE
		☐ Dismissed on recommendation of Probation Dept. ☐ Probation terminated: defendant discharged ☐ Sentence or disposition revoked (see cont'd page)			
COUNT / OFFENSE 2 DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)			DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 ☐ Bench Trial ☐ Jury Trial ☐ Dismissed upon: ☐ Request of Commonwealth ☐ Request of Victim ☐ Request of Defendant ☐ Failure to prosecute ☐ Other: ☐ Filed with Defendant's consent ☐ Nolle Prosequi ☐ Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT BATTERER'S FEE OTHER		SURFINE COSTS OUI §24D FEE OUI VICTIMS ASMT	
FINDING ☐ Guilty ☐ Not Guilty ☐ Responsible ☐ Not Responsible ☐ Probable Cause ☐ No Probable Cause		SENTENCE OR OTHER DISPOSITION ☐ Sufficient facts found but continued without a finding until: ☐ Defendant placed on probation until: ☐ Risk/Need or OUI ☐ Administrative Supervision ☐ Defendant placed on pretrial probation (276 §87) until: ☐ To be dismissed if court costs / restitution paid by:			
		FINAL DISPOSITION		JUDGE	DATE
		☐ Dismissed on recommendation of Probation Dept. ☐ Probation terminated: defendant discharged ☐ Sentence or disposition revoked (see cont'd page)			
COUNT / OFFENSE 3 DRUG, DISTRIBUTE CLASS B, SUBSQ. OFF. c94C §32A(b)			DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 ☐ Bench Trial ☐ Jury Trial ☐ Dismissed upon: ☐ Request of Commonwealth ☐ Request of Victim ☐ Request of Defendant ☐ Failure to prosecute ☐ Other: ☐ Filed with Defendant's consent ☐ Nolle Prosequi ☐ Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT BATTERER'S FEE OTHER		SURFINE COSTS OUI §24D FEE OUI VICTIMS ASMT	
FINDING ☐ Guilty ☐ Not Guilty ☐ Responsible ☐ Not Responsible ☐ Probable Cause ☐ No Probable Cause		SENTENCE OR OTHER DISPOSITION ☐ Sufficient facts found but continued without a finding until: ☐ Defendant placed on probation until: ☐ Risk/Need or OUI ☐ Administrative Supervision ☐ Defendant placed on pretrial probation (276 §87) until: ☐ To be dismissed if court costs / restitution paid by:			
		FINAL DISPOSITION		JUDGE	DATE
		☐ Dismissed on recommendation of Probation Dept. ☐ Probation terminated: defendant discharged ☐ Sentence or disposition revoked (see cont'd page)			

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Michael D Wornum	DOCKET NUMBER 2602CR001074
DATE	DOCKET ENTRIES		
5/14/26	Precees J 1st 4:22 AAM Mommsett AOA Ibrahim APO Primo Abby McKinnon apptd Δ present in custody Formal Reading waived Δ arraigned Not Guilty Plea 180 LCF or 12 hrs of community service CW's Motion to Revoke Δ's Bail / Recognizance pursuant to 276.58 on docket ① Bme Roxbury dockets 2502CR1865 + 2502CR1866 filed, heard + Allowed for 58 days until 7/10/26 ② Suffolk Superior Court dockets 2684CR0016 + 2584CR0566 filed, heard + Allowed for 57 days until 7/9/26 CW's Motion to Revoke Δ's Bail / Recognizance pursuant to 276.58B on docket ① Bme Roxbury dockets 2502CR1865 + 2502CR1866 filed, heard + Allowed for 90 days until 8/11/26 ② Suffolk Superior Court dockets 2684CR0016 + 2584CR0566 filed, heard + Allowed for 89 days until 8/10/26 Δ held on a \$1,000 cash bail Δ advised of right to a bail review Bail warning given →		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.			



CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Michael D Wornum In this case Originally Known As Michael Wornum	DOCKET NUMBER 2602CR001074
DATE	DOCKET ENTRIES		
	Cuts motion for forfeiture of property filed - No action taken Case cont for PC(3) 6/15/26 Issue mitt \$1,000 to SCT ret 6/15/26 Issue mitt W/O (Bail Rev) to SCT ret to Subbolk Superior Court on docket 26840R0016 + 25840R0566 on 6/26/26, 7/9/26 + 8/10/26		
6-5-26	Poole, J (3) Ann Zwick, Atty Warren • Δ motion for funds - Allowed Atty Warren Appt Atty McKinnon oral motion to withdraw - Allowed • Δ motion to present (BPD) - Allowed • Δ motion to present (Pancake Bread) - Allowed • Δ motion to present (Symphony Mkt) - Allowed Comm oral motion to continue for PC - Allowed over Δ objection Matter continued to 6-30-26 PC(3) MITT \$1000 to ISSM (SCJ)		
6/5/26	mitt issued (THW)		

APPROVED ABBREVIATIONS

ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review
 SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing



2602CR001074 Commonwealth vs. Wornum, Michael Dominique

- Case Type:
 - Criminal
- Case Status:
 - Open
- File Date
 - 05/14/2026
- DCM Track:
 -
- Initiating Action:
 - DRUG, DISTRIBUTE CLASS B c94C §32A(a)
- Status Date:
 - 05/14/2026
- Case Judge:
 -
- Next Event:
 - 10/02/2026

[All Information](#) [Party](#) [Charge](#) [Event](#) [Docket](#) [Disposition](#)

Party Information

Wornum, Michael Dominique
- Defendant

[Alias](#)

Party Attorney

- Attorney
- McKinnon, Esq., Michael A
- Bar Code
- 559835
- Address
- Phone Number
-

[More Party Information](#)

Party Charge Information

- **Wornum, Michael Dominique**
- - Defendant
- Charge # 1:
 - **94C/32A/E-1 - Felony** DRUG, DISTRIBUTE CLASS B c94C §32A(a)
- Original Charge
 - 94C/32A/E-1 DRUG, DISTRIBUTE CLASS B c94C §32A(a) (Felony)
- Amended Charge
 -
- **Wornum, Michael Dominique**
- - Defendant
- Charge # 2:
 - **94C/32A/G-1 - Felony** DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)
- Original Charge
 - 94C/32A/G-1 DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a) (Felony)
- Amended Charge
 -
- **Wornum, Michael Dominique**
- - Defendant
- Charge # 3:
 - **94C/32A/F-1 - Felony** DRUG, DISTRIBUTE CLASS B, SUBSQ. OFF. c94C §32A(b)
- Original Charge
 - 94C/32A/F-1 DRUG, DISTRIBUTE CLASS B, SUBSQ. OFF. c94C §32A(b) (Felony)
- Amended Charge
 -

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/14/2026 03:25 PM	1st (Arraignment) Session		Arraignment		Held - Bail or Conditions of Release ordered
06/05/2026 09:00 AM	3rd (Pretrial) Session		Probable Cause Hearing		Reschedule of Hearing
06/30/2026 09:00 AM	3rd (Pretrial) Session		Probable Cause Hearing		Reschedule of Hearing
07/10/2026 09:00 AM	3rd (Pretrial) Session		Probable Cause Hearing		Reschedule of Hearing
08/07/2026 09:00 AM	3rd (Pretrial) Session		Probable Cause Hearing		Reschedule of Hearing
10/02/2026 09:00 AM	3rd (Pretrial) Session		Probable Cause Hearing		

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/14/2026	Criminal Complaint issued from Electronic Application: Originating Court: BMC Roxbury Case Number: 2602AC001773-AR Receiving Court: BMC Roxbury ;			
05/14/2026	Complaint issued upon new arrest.			
05/14/2026	Appearance filed On this date Michael A McKinnon, Esq. added as Appointed - Indigent Defendant for Defendant Michael Dominique Wornum Appearance filed for the purpose of Case in Chief by Judge Hon. Dana Pierce.		1	
05/14/2026	Defendant arraigned before Court, advised of right to counsel. Judge: Pierce, Hon. Dana		2	
05/14/2026	Defendant waives reading of charges. Judge: Pierce, Hon. Dana			
05/14/2026	Plea of Not Guilty entered on all charges. Judge: Pierce, Hon. Dana			
05/14/2026	Bail revocation warning (276/58) given to the defendant Judge: Pierce, Hon. Dana			
05/14/2026	Event Resulted: Arraignment scheduled on: 05/14/2026 03:25 PM Has been: Held - Bail or Conditions of Release ordered Hon. Dana Pierce, Presiding			
05/14/2026	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$1,000.00 Cash), returnable for 06/05/2026 09:00 AM Probable Cause Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Pierce, Hon. Dana		3	
05/14/2026	Commonwealth's motion to revoke defendant's bail pursuant to 276/58 AND 276/58B on dockets 2502CR001865, 2502CR1866 AND on Suffolk Superior Court dockets 2684CR0016 & 2684CR00566. - ALLOWED for 60 AND 90 days. BMC Roxbury End Dates: 7/10/2026 AND 8/11/2026 Suffolk Superior End Dates: 7/9/2026 AND 8/10/2026 **MOTIONS SCANNED IN DOCKET 25/1866** filed with the following, if any, supporting documents: Judge: Pierce, Hon. Dana		4	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/05/2026	Event Resulted: Probable Cause Hearing scheduled on: 06/05/2026 09:00 AM Has been: Reschedule of Hearing For the following reason: Commonwealth's request with objection Hon. David B Poole, Presiding			
06/05/2026	Defendant's motion to preserve evidence symphony market; ALLOWED filed with the following, if any, supporting documents:	5		 Image
06/05/2026	Defendant's motion for exparte approval of funds for an investigator; ALLOWED filed with the following, if any, supporting documents: affidavit in support of motion	6		 Image
06/05/2026	Commonwealth's motion to preserve evidence-Panera bread; ALLOWED filed with the following, if any, supporting documents:	7		 Image
06/05/2026	Defendant's motion to preserve evidence from Boston police department; ALLOWED filed with the following, if any, supporting documents:	8		 Image
06/05/2026	Commonwealth 's Criminal motion to reschedule or continue scheduled court hearing orally presented to the court ALLOWED w objections Judge: Poole, Hon. David B			
06/05/2026	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$1,000.00 Cash), returnable for 06/30/2026 09:00 AM Probable Cause Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Poole, Hon. David B	9		
06/30/2026	Event Resulted: Probable Cause Hearing scheduled on: 06/30/2026 09:00 AM Has been: Reschedule of Hearing For the following reason: Commonwealth's request with objection Hon. David J Breen, Presiding			
06/30/2026	Defendant 's Criminal motion to Dismiss orally presented to the court DENIED Judge: Breen, Hon. David J			
06/30/2026	Defendant's motion to reconsider and vacate 90 day bail revocation; filed filed with the following, if any, supporting documents: affidavit in support of motion	10		 Image
06/30/2026	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$1,000.00 Cash), returnable for 07/10/2026 09:00 AM Probable Cause Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Breen, Hon. David J	11		
07/10/2026	Event Resulted: Probable Cause Hearing scheduled on: 07/10/2026 09:00 AM Has been: Reschedule of Hearing For the following reason: Commonwealth's request with objection Hon. Dana Pierce, Presiding			
07/10/2026	Defendant 's Criminal motion to Dismiss orally presented to the court OR reduce bail, DENIED. Judge: Pierce, Hon. Dana			
07/10/2026	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$1,000.00 Cash), returnable for 08/07/2026 09:00 AM Probable Cause Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Pierce, Hon. Dana	12		

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/17/2026	Decision on the Defendant's Motion to Reconsider & Vacate 90-Day Revocation filed; Motion DENIED in full as to all grounds put forth by the Defendant for allowance of said motion. Judge: Pierce, Hon. Dana			
07/22/2026	Judge Pierce files "Report of Questions of Law" pursuant to Mass.R.Crim.P.34 filed. Judge: Pierce, Hon. Dana			
07/23/2026	"Report of Questions of Law" and relevant documents emailed to the Suffolk Appeals Court. Judge: Pierce, Hon. Dana			
08/07/2026	Event Resulted: Probable Cause Hearing scheduled on: 08/07/2026 09:00 AM Has been: Reschedule of Hearing For the following reason: Commonwealth's request with objection Hon. David J Breen, Presiding			
08/07/2026	Defendant 's Criminal motion to Dismiss orally presented to the court DENIED Judge: Breen, Hon. David J			
08/07/2026	Defendant 's Criminal motion to revise/revoke bail or conditions of release orally presented to the court ALLOWED; defendant bail reduced to personal Judge: Breen, Hon. David J			
08/07/2026	Release on personal recognizance with pre-trial conditions, to wit: Stay away from court ordered location Judge: Breen, Hon. David J			
08/07/2026	Reasons for ordering bail. Judge: Breen, Hon. David J		13	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Pending	05/14/2026	

SUFFOLK, ss.

Boston Municipal Court Department
Roxbury Division
Docket # 2602CR1074

COMMONWEALTH

v.

MICHAEL WORNUM

REPORT OF QUESTIONS OF LAW PURSUANT TO MASS. R. CRIM. P. 34

On May 14, 2026, the complaint issued in this matter charging the defendant with distribution of a class B substance (G.L. c. 94C, § 32A (a)), possession with intent to distribute a class B substance (G.L. c. 94C, § 32A (a)), and distribution of a class B substance, subsequent offense (G.L. c. 94C, § 32A (b)). The defendant was arraigned that day and a bail hearing was held, during which the Commonwealth moved to revoke the defendant's bail pursuant to both G.L. c. 276, § 58 (Section 58) and § 58B (Section 58B) on four pending criminal cases.¹ This Court determined that the Commonwealth met its burden under both Sections 58 and 58B and thus allowed the bail revocation motion under both statutes, revoking the defendant's bail for 60 days under Section 58, and 90 days under Section 58B on all four open cases.

The defendant filed a motion to reconsider on June 30, 2026, arguing 1) the rebuttable presumption of revocation provided for in Section 58B upon the showing of probable cause the defendant committed a new offense is unconstitutional, raising the issue pointed out by the Supreme Judicial Court in Josh J. v. Commonwealth, 478 Mass. 716, 723 n.7 (2018) (rebuttable presumption of revocation in Section 58B "may be difficult to reconcile with the presumption

¹ The defendant's open cases that his bail was revoked on are Roxbury Division docket numbers 2502CR1865, 2502CR1866, as well as Suffolk Superior Court docket numbers 2684CR0016 and 2684CR0566.

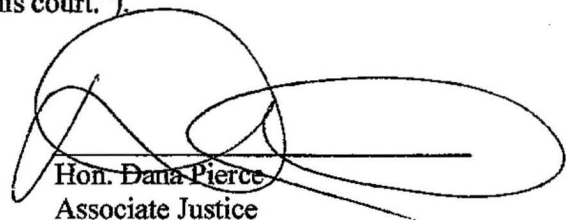
recognized in § 58 that an individual will be released on bail or personal recognizance”); and 2) the Court’s order revoking bail under both Sections 58 and 58B was in violation of Josh J. because the language of Josh J. required revocation under “*either § 58 or § 58B*”, id. at 719 (emphasis added), but not both; and 3) conditions of release were available to allow for the defendant’s release.

This Court denied the defendant’s motion after a hearing on July 10, 2026, and now reports the following questions raised by the motion:

- 1) Whether the rebuttable presumption of revocation provided for in Section 58B upon a finding of probable cause the defendant committed a new offense is constitutional, considering the presumption in favor of bail and personal recognizance in Section 58?
- 2) Whether a defendant’s bail must be revoked under “*either § 58 or § 58B*” if the Commonwealth meets its burden under both statutes? In other words, if the Commonwealth meets its burden for revocation under both statutes, can a defendant’s bail be revoked under both statutes?

The Court reports these questions because they involve legal issues raised before it on a frequent basis that bear on the possible length of a defendant’s pretrial detention. Additionally, the first question set out above raises a constitutional issue identified by the Supreme Judicial Court over eight years ago, and is likely to evade appellate review as it involves bail and pretrial release. See Mendoza v. Commonwealth, 423 Mass. 771, 777 (1996) (addressing constitutionality of G.L. c. 276, § 58A as “[t]he issues are certainly of recurring importance to the administration of justice in the Commonwealth, yet owing to the limited time during which detention is authorized and the very short time during which a continuance on the motion of the Commonwealth may be granted, they would almost certainly evade review in this court.”).

Date: 7/22/200


Hon. Dana Pierce
Associate Justice

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 11; Mass. R. A. P. 16(a)(13); Mass. R. A. P. 16(e); Mass. R. A. P. 18; Mass. R. A. P. 20; and Mass. R. A. P. 21. The brief is printed in Century Schoolbook font and the Argument Section does not exceed 2,000 words. That section consists of 1,975 words as tallied by the word count function of Microsoft Word.

September 30, 2026
Date

/s/ John P. Warren
John P. Warren
Law Office of John P. Warren
132 Lincoln Street, Suite 5L
Boston, MA 02111
BBO #685597
(617) 383-4482
john@johnpwarrenlaw.com

CERTIFICATE OF SERVICE

I, John P. Warren, do certify that I served the enclosed Application for Direct Appellate Review electronically upon the Commonwealth through the efilings system, to:

Kenneth E. Steinfield, Esquire
Office of the District Attorney/Suffolk
One Bulfinch Place
Boston, MA 02114

on this 30th day of September 2026.

/s/ John P. Warren
John P. Warren