

District Court Standing Order 1-22: Scheduling G.L. c. 123 Hearings

Pursuant to my authority as Chief Justice of the District Court Department under G.L. c. 211, § 10, G.L. c. 218, § 38, and G.L. c. 220, § 5, I issue the following Standing Order regarding the scheduling of G.L. c. 123 hearings by the District Court. This Order supersedes only the inconsistent provisions in Joint Standing Order 2-22 of the Boston Municipal Court Department and District Court Department: Court Operational Order; otherwise that Order remains in effect.¹

It is hereby ORDERED that:

Individual courts retain discretion to determine the location of G.L. c. 123 hearings and whether to hold the hearing by video. This Standing Order makes no presumption as to the location of G.L. c. 123 hearings or whether they are held by video or in-person, other than proceedings under §§ 12, 15, & 35, where the respondent is in the custody of the police; only those proceedings are presumptively to be held in-person so that custody may be removed from the police.

Recognizing, *inter alia*, the varied needs and resources of different courts, the volume and scheduling differences in such hearings based on the number of facilities² within a court's jurisdiction, and the strict deadlines applicable to these proceedings, it is up to individual courts to determine where to schedule G.L. c. 123 hearings for persons who are currently hospitalized on a pending commitment petition, including those held within the strict security of Bridgewater State Hospital, and whether to schedule such hearings in-person or by video. See G.L. c. 123, § 5.

The following non-exclusive list of factors should be considered, and the initial scheduling of filed petitions may be done in a manner to ensure compliance with the applicable time frames, prompt assignment of counsel, and notice of the hearing:

- the number of scheduled cases in the mental health session;
- the number of facilities within an individual court's jurisdiction;
- the particular transportation needs for the facilities within the court's jurisdiction;
- whether a facility allows hearings to be conducted in person or are restricting access to outside persons;
- the staffing needs to hold an in-person hearing, including, if in-person at the courthouse, the availability of sufficient mental health workers to oversee a patient;
- the court's technological abilities to hold hearings by video;
- the facility's technological abilities to hold hearings by video;
- the availability of a formal and dignified hearing room sufficient in size to accommodate the judge, clerk, court officer(s), and the public;

¹ All current court orders are available at the judiciary's "Court System Response to COVID-19" webpage at <https://www.mass.gov/guides/court-system-response-to-covid-19>.

² The reference to "facility" in this Standing Order includes Bridgewater State Hospital.

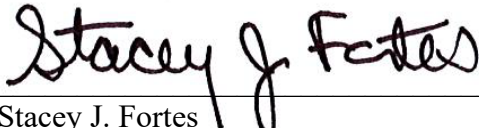
- any policies requiring a quarantine period for patients not vaccinated against the COVID-19 virus and returning to the facility from the courthouse;
- whether a particular facility has the ability to quarantine a patient if they were to be exposed to COVID-19 while at a courthouse;
- ensuring the facility is able to provide sufficient security for all parties;
- ensuring the hearing will be fully and completely recorded;
- ensuring the hearing will be open and accessible to the public.

Regardless of whether an individual court schedules its commitment hearings by video or in-person, a judge retains discretion to determine on a case-by-case basis where to hold the hearing and whether by video or in-person. A judge shall consider any motion filed requesting a change to the scheduling of the hearing, and shall consider the above-listed factors, as well as the following non-exclusive factors:

- the issues that are being presented;
- the location of the participants;
- the health status and vaccination status of the participants;
- the transmission rate of any communicable diseases where the facility is located.

A judge shall make written findings if the judge denies a request for an in-person hearing.

This Order is effective December 19, 2022 and shall remain in effect until further order of this Court.



Stacey J. Fortes
Chief Justice of the District Court

Promulgated: November 28, 2022