

Chief Justice of the District Court
Standing Order 4-15. Conditions of release at a probation detention hearing.
Amended effective December 1, 2019

1. This standing order is issued pursuant to Dist./Mun. Cts. R. Prob. Viol. P. 5(c) to set forth the only permissible conditions of release that may be imposed after a court finds probable cause at a probation detention hearing to believe that a probationer has violated a condition of probation. Such conditions are intended to be of limited duration, applying only until the probation violation hearing, which shall be within thirty days, absent “extraordinary circumstances.” Dist./Mun. Cts. R. Prob. Viol. P. 3(b)(iii), 3(c)(vi), 4(d). Conditions may be set only when the court, in the exercise of discretion, decides not to detain the probationer. Conditions of release shall be set forth in writing and a copy thereof served in hand to the probationer.

2. Upon a finding of probable cause that a probationer has violated a condition of probation, the court may impose only nonmonetary conditions of release, including but not limited to any one or a combination of the following conditions:

- a. **No contact.** The probationer shall have no contact with a specified person or persons, in person, by telephone, in writing, electronically, or otherwise, either directly or through someone else.
- b. **Stay away.** The probationer shall stay a defined distance away from a specified person, persons, business, or location.
- c. **Report as directed.** In addition to any preexisting reporting requirements, the probationer shall report to the probation department as ordered by the court or, with the court’s authorization, as directed by the probation department.
- d. **Electronic monitoring.** The probationer shall submit to electronic monitoring, which may include
 - i. **house arrest**, with such exceptions as the court may allow;
 - ii. **curfew**, requiring the probationer to be at a specified address between specified hours; and/or
 - iii. **exclusion zones, as set by the court.**
- e. **Required residence.** The probationer shall reside at a specified address, which may be verified by unannounced home visits by probation.
- f. **Abstinence and testing.** The probationer shall abstain from the consumption of illegal and non-prescribed narcotics, alcohol, and/or non-medical marijuana, with testing to verify such abstinence.

- g. **Motor vehicle restrictions.** The probationer shall not operate a motor vehicle, with such exceptions as the court may allow.

3. If the court or a probation officer has reasonable grounds to believe that a probationer has violated a condition of release, the court or probation officer may summons the probationer for a hearing or, if there is probable cause, issue an arrest warrant. A probation officer, if there is probable cause, may arrest the probationer without a warrant. The court shall then hold a hearing as soon as practicable to determine whether there is probable cause to believe that the probationer has violated a condition of release. The rules of evidence shall not apply, and this determination may be “decided based on documents (e.g., police reports) and the representations of counsel.” *Paquette v. Commonwealth*, 440 Mass. 121, 133 (2003). The court may, in its discretion, allow the presentation of testimonial evidence and cross-examination “when the circumstances of a particular case warrant.” *Id.* If the court determines that there is probable cause that a probationer has violated such a condition of release, the court shall have the authority, in the exercise of discretion, to order the probationer detained until the completion of the probation violation hearing. *See id.* at 126 (“if the person violates the explicit condition of his release, then his liberty can be curtailed”). When granted conditional release, a person’s “continued freedom [i]s entirely within his own control, and the deprivation thereof [i]s an inevitable consequence of his alleged failure to conform his conduct . . . to the explicit condition of his earlier release.” *Id.* at 129.

4. Conditions of release imposed under Rule 5(c) are not conditions of probation. A violation of a condition of release shall not itself be the basis for a finding of a violation of probation, although the judge may consider such violation in determining a proper disposition under Dist./Mun. Cts. R. Prob. Viol. P. 8(d) and 9(b).