# Massachusetts Juvenile Court Rules for the Care and Protection of Children

Including Standing Orders

**Effective April 1, 2021**

Does not include COVID-19 orders

# Commonwealth of Massachusetts Juvenile Court Department Rules and Standing Orders

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**Print sources for rules:**

- Annotated Laws of Massachusetts: Court Rules, LexisNexis, annual.
- Massachusetts General Laws Annotated, v.43A-43C, West Group, updated annually with pocket parts.
- Massachusetts Rules of Court, West Group, annual.
- The Rules, Lawyers Weekly Publications.

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# Massachusetts Juvenile Court Rules for the Care and Protection of Children

## Rule 1. Scope of rules

These rules apply to all actions in the Juvenile Court Department for the care and protection of children, including actions for guardianship of minors, child support, parentage, name change and actions seeking to dispense with parental consent to adoption, custody, guardianship or any other disposition of the child pursuant to G. L. c. 119 and c. 210.

**Note**

Throughout these rules "paternity" has been replaced by the gender-neutral term "parentage." See Partenan v. Gallagher, 475 Mass. 632 (2016).

See G. L. c. 119, § 24 (care and protection), c. 190B, §§ 1-401 and 5-101 (guardianship of minors), c. 209C, § 3(c) (parentage and support), c. 119, § 28 (temporary support), and c. 210, § 1 (authority of the Juvenile Court to hear cases pursuant to c. 210 with respect to pending proceedings in the Juvenile Court). Proceedings that seek equitable relief are governed by the Massachusetts Rules of Civil Procedure, including proceedings pursuant to G. L. c. 210, § 6D (enforcement of post-adoption agreements). See G. L. c. 218, § 59 and Mass. R. Civ. P., Rule 1. Permanency Hearings are governed by the Massachusetts Trial Court Rule VI Uniform Rules for Permanency Hearings.

## Rule 2. Definition of terms

For these rules the terms below shall have the following definitions:

**"Child"** means the person who is the subject of the petition or complaint.

**"Department"** means the Department of Children and Families or its successor.

**"Order or Decree Dispensing with Consent to Adoption"** means an order or decree dispensing with the need for consent to adoption, guardianship or any other disposition of the child, commonly referred to as "termination of parental rights."

**"Precept"** means an order of the court to take and bring the child who is the subject of the care and protection petition before the court.

## Rule 3. Precepts

**A. Procedure.** The court may order a precept sua sponte or upon the request of the petitioner or the Department. The precept shall be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person designated by the court and shall be on a form approved by the Chief Justice of the Juvenile Court.

**B. Service.** The precept shall be served forthwith. The child shall be brought to the court within court hours and identified. Nothing in this rule limits the authority or responsibility of the Department regarding the care and custody of children as set forth in statutes, case law and Department regulations.

**C. Return of service**. The officer or other person making service in accordance with this rule shall make a return of service on the precept and file it promptly with the court.

**Note**

If the precept is served and the child cannot be brought before the court the same day, the Department shall bring the child to the court for identification as soon thereafter as practicable. If available and with prior arrangement, the child may be identified by way of videoconference. See Executive Office Transmittal 14-4 Trial Court Videoconferencing Policy. The child should be identified by a judge from the court that issued the precept. However, if necessary and with prior arrangement, the child may be identified by a judge from a different Juvenile Court. See Order of Assignment dated February 12, 2014 authorizing justices appointed to a particular division of the Juvenile Court Department and circuit

justices appointed to the Juvenile Court Department to sit and act as justices in all divisions of the Juvenile Court Department.

## Rule 4. Appointment of counsel

Counsel shall be appointed in accordance with the provisions of G. L. c. 119, § 29 and c. 211D, the Massachusetts Rules of the Supreme Judicial Court, Rule 3:10, and applicable case law.

**Note**

See Dept. of Pub. Welfare v. J.K.B., 379 Mass. 1 (1979) (indigent parent entitled to court-appointed counsel in termination of parental rights proceedings pursuant to G. L. c. 210, § 3), Guardianship of V. V., 470 Mass. 590 (2015) (indigent parent entitled to court-appointed counsel on a guardianship petition pursuant to G. L. c. 190B) and L.B. v. Chief Justice of the Probate and Family Court Dept., 474 Mass. 231 (2016) (indigent parent entitled to court-appointed counsel in petitions to remove guardian and/or seek visits with the child under the guardianship provided the parent presents a meritorious claim for removal and/or modification of visitation).

## Rule 5. Process

**A. Summons to parent/guardian; service of process by publication**

**1. Care and protection cases**

After the filing of the care and protection petition, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child, the legal guardian, if any, the legal custodian, if any, and the Department, if the legal custodian. The summons or order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served on each of the above in the following manner:

**(a)** If the place of residence or whereabouts of the persons above is known, service shall be accomplished by delivery in hand. Service shall be accomplished on the Department by delivering the summons or order of notice to the appropriate Office of the Regional Counsel.

**(b)** Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing on persons above, if present, and upon a representative of the Department.

**(c)** If the Department is not the legal custodian, the petitioner shall provide notice to the Department of the filing of the petition by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

**(d)** If the place of residence or whereabouts of persons above, except the parent(s), is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt

requested, to the last known place of residence, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders.

**(e)** If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

**(f)** If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

**(g)** Whenever service by publication is required in a care and protection case, the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order in the newspaper or newspapers designated by the court once in each of three successive weeks, the final publication to appear no later than the pretrial conference date unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the parent to be served by publication.

**(h)** If, after the petitioner has perfected service of process in accordance with this rule, no parent has appeared or can be found, and the legal guardian, if any, has not appeared and the legal custodian, if any, has not appeared, a summons shall be issued to the person with whom such child last resided, if known.

**2. Guardianship of a minor cases**

Except as provided for in subsection (i), after the filing of a guardianship petition, the petitioner shall cause notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on the person(s) set forth in G. L. c. 190B, § 5-206. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

**(a)** If the place of residence or whereabouts of persons entitled to notice pursuant to G. L. 190B, § 5-206 is known, service shall be accomplished by delivery in hand on the:

(i) parent(s);

(ii) child if age fourteen or older and not the petitioner;

(iii) person given care or custody of the child by court order and with whom the child has resided within sixty days prior to the filing of the petition, excluding foster parent(s);

(iv) current guardian or conservator for the child; and

(v) the Department, if the legal custodian. In-hand service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel.

**(b)** Personal service may be accomplished on person(s) entitled to in-hand service pursuant to paragraph (a), if present, and upon a representative of the Department, if the legal custodian, when the matter comes before the judge.

**(c)** Service shall be accomplished on all others entitled to notice pursuant to G. L. c. 190B, §5-206 by certified or registered mail, return receipt requested, to the last known place of residence or whereabouts, if known. Service shall be accomplished on the Department, if not the legal custodian, by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

**(d)** If the place of residence or whereabouts of a person, except the parents, entitled to in-hand service pursuant to paragraph (a) is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt requested, to the last known place of residence, the mailing to be at least fourteen days before the petition for guardianship is heard, unless the court otherwise orders.

**(e)** If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least fourteen days before the petition for guardianship is heard, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

**(f)** If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

**(g)** Whenever service by publication is required in a guardianship case the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by

Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for guardianship is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.

**(h)** If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans. Administration or its successor, service shall be made on the Veterans Administration or its successor by certified or registered mail, return receipt requested, unless the court otherwise orders.

**(i)** No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with G. L. c. 210, § 2; or (3) if the court has terminated parental rights pursuant to G. L. c.119, § 26 or c. 210, § 3.

**(j)** A motion for the appointment of a temporary guardian may not be filed unless a guardianship petition has been filed. If service of the notice of the guardianship petition has not been made in accordance with this rule, a copy of the motion for the appointment of temporary guardian and written notice of its hearing shall be served with the notice of the guardianship petition, unless the court otherwise orders.

**3. Parentage and child support cases**

After the filing of a complaint for parentage or an order of child support, or both, the plaintiff shall cause notice and a copy of the complaint to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child unless a parent has assented to the filing of the complaint, on the child, if the child is age fourteen years or older, on the Department, if the legal custodian, and on the person entitled to notice pursuant to G.L. c. 209C, § 6. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the complaint in the following manner:

**(a)** If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the child is age fourteen years or older, service shall be made in the same manner on the child. Service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel, attention to the Regional Counsel.

**(b)** Personal service may be accomplished on the parent or child who is age fourteen years or older, if present, and on a representative of the Department, if the legal custodian, when the matter comes before the judge.

**(c)** If the Department is not the legal custodian of the child, the plaintiff shall provide notice to the Department of the filing of the complaint by certified or registered mail,

return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

**(d)** If the place of residence or whereabouts of a parent is known but the plaintiff has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the plaintiff's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least fourteen days before the complaint for parentage or support is heard, unless the court otherwise orders, and

(ii) publication in accordance with subsection (e), below.

**(e)** Whenever service by publication is required in a parentage or child support case the court shall, upon motion of the plaintiff, other party, or sua sponte, issue an Order for Service by Publication. The plaintiff shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the complaint for parentage or support is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the plaintiff to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the person to be served by publication.

**4. Change of name cases**

Except as provided in subsection (e), after the filing of a change of name petition, the petitioner shall serve notice on each of the parents of the child and upon the Department if the legal custodian or if there is a care and protection case pending, in accordance with an order of notice. An order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

**(a)** Service shall be accomplished by certified or registered mail, return receipt requested, on the parent to the last known place of residence of the parent and on the Department to the appropriate Office of the Regional Counsel, attention to the Regional Counsel, the mailing to be at least fourteen days before the petition for change of name is heard, unless the court otherwise orders.

**(b)** Service may be accomplished by a court officer on the parent, if present, and on a representative of the Department when the matter comes before the judge.

**(c)** If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by certified or registered mail despite diligent efforts to do so or if the place of residence or whereabouts of a parent cannot be found after

diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by publication in accordance with subsection (d), below.

**(d)** Whenever service by publication is required in a change of name case the court shall, upon motion of the petitioner, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.

**(e)** No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with G. L. c. 210, § 2; or (3) if the court has terminated parental rights pursuant to G. L. c. 210, § 3.

**B. Filing proof of publication**

Following publication in accordance with the order, counsel for the petitioner or plaintiff shall promptly complete and file in the Clerk's office an Affidavit of Notice of Publication on a form approved by the Chief Justice of the Juvenile Court and shall file a completed Military Affidavit as to the person served by publication.

**C. Joint publication**

In a case involving two or more children who have the same parents, the petitioner or plaintiff may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

**D. Filing of return of service**

The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice that the petitioner or plaintiff shall promptly file with the court.

**Note**

See Trial Court Rules, Rule IV Uniform Rule Requiring Disclosure of Pending and Concluded Care or Custody Matters and Rule X Uniform Rule Requiring Disclosure of Present or Past Receipt of Public Assistance Benefits by Minor Children. Current Juvenile Court forms are available online on the Juvenile Court website.

**Subsection A. Service on the Department.** When providing service in hand or by certified or registered mail on the Department, the address to be used is that of the Office of the Regional Counsel for the region in which the case is filed.

**Subsection A.3.** See G.L. c. 209C, § 6, relative to persons who must be joined as a party and the manner of notice required.

**Subsection A.4.** Petitions for change of name pursuant to G. L. c. 210, § 12 are for name changes other than those that occur in the context of adoption cases or, in some instances, parentage cases. After the petition for change of name is allowed, the clerk may, upon request, issue a Certificate of Name Change. Allowance of the petition for change of name will not result in an amendment of the birth certificate. The birth name remains the same.

## Rule 6. Filing of birth certificates

**A. Care and protection cases.** The petitioner shall file, within sixty days of commencement of the action, a certified copy of the birth certificate issued after the date of the filing of the petition, of each child named in the petition. In rare circumstances and for good cause shown, the judge may extend the time or waive the filing of the birth certificate. The petitioner may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A if the petitioner does not have custody of the child.

**B. Guardianship, parentage and change of name cases.** The petitioner or plaintiff shall file along with the petition or complaint, a certified copy of the birth certificate for each child named in the petition or complaint. For good cause shown, the judge may extend the time or waive the filing of the birth certificate. The certified birth certificate shall have been issued within sixty days of filing the petition or complaint. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A if the petitioner or plaintiff does not have custody of the child. If there is a certified copy of the child's birth certificate on file in the care and protection case, the clerk may copy and file it in the guardianship, parentage or change of name case provided that it was filed in the care and protection case within sixty days of the filing of the guardianship petition, parentage complaint or change of name petition.

**Note**

**A.** The importance of having a recent certified copy of the child's birth certificate to determine parentage in order to provide parents with notice and the opportunity to be heard cannot be overstated. "Good cause" should be construed narrowly and constitute more than mere inconvenience; however, there may be circumstances in which a certified copy of the birth certificate cannot be obtained or obtaining it would cause unreasonable delay in the disposition of the case. In such circumstances, including but not limited to instances in which a foreign birth certificate cannot be obtained, a judge may waive the filing of a certified copy of a birth certificate. In the event a foreign birth certificate is obtained, the burden is on the petitioner to provide an English translation of a foreign birth certificate.

**B.** There may be circumstances in which the certified copy of the birth certificate in the care and protection case does not satisfy the requirements of this rule and cannot be used when filing a guardianship, change of name petition, or a parentage complaint. In those instances, if the petitioner or

the plaintiff does not have custody of the child and cannot otherwise obtain a certified copy of the birth certificate, he/she may file a motion in the underlying care and protection case for a court order to produce the birth certificate for filing with the petition or complaint. The person seeking such an order may be permitted to appear in the care and protection case for the sole purpose of filing such a motion. An appearance for this limited purpose does not make the person a party to the care and protection case.

## Rule 7. Service and form of papers

**A. Form of motion.** Every motion or other document filed with the court, other than documents offered in evidence, shall be on 8 ½" x 11" paper, or in an electronic or digital manner approved by the court, and shall have a heading which includes the name, division and county of the court, the docket number, the title of the action and a designation of the nature of the motion or document. Every such motion or document shall set forth the name, address, telephone number and email address of the attorney or pro se party filing it, the Board of Bar Overseers registration number of the attorney, and the date on which the motion or other document was filed with the court.

**B. Requirement of affidavit.** Unless a motion, other than a motion to dismiss as provided in paragraph C, is made during a hearing or trial, any request for a court order shall be made by written motion accompanied by an affidavit signed by the person with personal knowledge of the factual basis of the motion, and shall state with particularity the grounds therefor, and shall set forth the relief or order sought, provided however, that the following types of motions are not required to be accompanied by an affidavit: motions in limine, motions to strike, motions for discovery, motions for appointment of appellate counsel, motions to correct a name on the petition and motions for continuance or change of court date. Whenever a motion is supported by an affidavit or memorandum, the affidavit or memorandum shall be served with the motion.

**C. Motions to dismiss.** All motions to dismiss shall be in writing accompanied by an affidavit signed by the person with personal knowledge of the factual basis of the motion and shall state with particularity the grounds therefor.

**D. Notice.** All motions other than those which do not require a hearing shall be scheduled by the court in accordance with procedures established by the court division. A written motion, other than one that may be heard ex parte, and notice of the hearing of the motion, shall be served pursuant to paragraph E of this rule, no later than seven days prior to the hearing. When service is made by mail, the motion and notice of the hearing shall be served no later than ten days prior to the hearing. An application for ex parte relief from the seven day notice requirement shall be made by motion for a short order of notice and supported by affidavit setting forth the nature of the emergency.

**E. Manner of service.** Every motion, except an ex parte motion, or document filed in court shall be served by the attorney or party filing it by mailing or delivering a copy or electronically in accordance with court procedure, to each attorney of record, and each party appearing pro se.

## Rule 8. Appearances

All counsel, including court-appointed counsel, shall file a notice of appearance in the Clerk's Office by hand delivery or mail that shall include the name of the attorney, address, telephone number, email address and Board of Bar Overseers registration number. A copy of the appearance shall be served on all parties.

**Note**

This rule applies to all private and court-appointed counsel and to attorneys employed by state agencies, including but not limited to, the Department and the Committee for Public Counsel Services.

## Rule 9. Temporary custody hearing and waiver

The temporary custody hearing pursuant to G. L. c. 119, § 24 or § 25 may be waived by a parent, guardian, custodian or child. The waiver of the parent, guardian or custodian shall be in writing signed by the parent, guardian or custodian and, unless such person is self-represented, accompanied by a certification by his/her attorney. The certification shall include a statement that the attorney has discussed the waiver with his/her client and advised the client that he/she is giving up the right to object and present evidence at the hearing in opposition to the court's orders, including orders regarding his/her child's custody, and the right to appeal the court's orders. The waiver and the certification shall be on a form approved by the Chief Justice of the Juvenile Court. The court shall conduct a colloquy with the parent, guardian or custodian and determine whether the waiver was intelligently and voluntarily made. The attorney for the child may waive the temporary custody hearing by signing a waiver and certification form on behalf of his/her client.

**Note**

This temporary custody hearing may be held pursuant to one of two mutually exclusive statutory provisions, G. L. c. 119, § 24 (so-called "72 hour" hearing) or § 25 (non-emergency temporary custody hearing). At the temporary custody hearing, the judge must determine whether custody should be removed from the child's parent, guardian or custodian, or whether the initial temporary custody order should be continued, depending on the circumstances. The judge must consider any nomination by the child or the parents of a relative or other individual to become the temporary legal custodian pending the hearing on the merits. See Care and Protection of Manuel, 428 Mass. 527 (1998). The judge must also make the written certification and determinations required by G. L. c. 119, § 29C (contrary to the welfare certification and reasonable efforts determination). See Care and Protection of Walt, 478 Mass. 212 (2017).

This rule addresses waiver of a parent, guardian, custodian or child of either a § 24 or § 25 temporary custody hearing. By waiving the temporary custody hearing, the parent, guardian, custodian or child is relinquishing his/her right to be heard, to object to the court's orders and to appeal the orders. A parent, guardian, custodian or child may waive the hearing by formal action as provided in this rule or may forfeit the hearing by failure to appear or participate after having received notice of such hearing. Waiver or forfeiture of the hearing is distinguished from the circumstance in which a parent, guardian, custodian or child agrees to a temporary transfer of custody but seeks to nominate a relative or other individual to be appointed the child's temporary custodian pending the hearing on the merits or be heard on the issue of reasonable efforts. Although that party may have acknowledged or stipulated that there is sufficient evidence to support a temporary transfer of custody, he/she has not waived the opportunity to be heard on the issue of a third party temporary custody order or the issue of reasonable efforts. There may be situations in which a parent, guardian, custodian or child requests a reasonable amount of time beyond the scheduled 72 hour hearing to nominate another individual or family member, or more time is necessary to complete a home study of the proposed nominee. In those cases,

after the hearing has commenced, the judge may continue the temporary custody hearing to another date for this purpose.

A temporary custody hearing held pursuant to either G. L. c. 119, § 24 or § 25 is not a so called "placement hearing". Placement decisions are within the discretionary powers of the legal custodian as one of the usual incidents of custody. See G. L. c. 119, § 21. Decisions related to the normal incidents of custody generally are committed to the Department or third party legal custodian and are reviewable only under § 21 for abuse of discretion or error of law. The court does not have authority to subject the Department to conditions regarding placement. See Care and Protection of Isaac, 419 Mass. 602 (1995), Care and Protection of Jeremy, 419 Mass. 616 (1995) but see Care and Protection of Walt, 478 Mass. 212. In contrast, if the court grants custody to a third party, it may subject the grant of custody to conditions, including conditions that restrict the third party custodian from changing the child's placement.

## Rule 10. Written reports by the Department

The Department shall file a written report with the court each time the case is before a judge for hearing or report. The report shall be filed in the Clerk's Office at least two days in advance of the scheduled court date and shall contain relevant information regarding the child, the parents, caregivers, the services being offered and provided and the progress towards the permanency goal. The failure of the Department to provide the report in advance of the scheduled court date shall not preclude the judge from proceeding with the hearing.

## Rule 11. Investigator's report in care and protection cases

In a care and protection case, including a case in which the need for parental consent to adoption is an issue, the report of the court-appointed investigator required by G. L. c. 119, §§ 21A and 24 shall be filed in the Clerk's Office within sixty days after the appointment of the investigator, unless the court otherwise orders. A request for extension of time to file the court investigator's report shall be made by motion on a form approved by the Chief Justice of Juvenile Court, signed by the court investigator and approved by a justice of the Juvenile Court. Any motion for extension of time shall be filed no later than fourteen days prior to the date the report is due, provided however, that the court may permit the filing of a motion for an extension of time at some other time in the interests of justice. If the court approves a motion for extension of time, the court investigator shall provide a copy of the approved motion to all counsel of record and to any party who is not represented by counsel.

**Note**

Counsel of record may obtain from the Clerk's Office a copy of the court investigator's report without filing a motion to do so. Standing Order 1-84 applies to all court-appointed investigator reports.

## Rule 12. Assignment of care and protection cases

At the conclusion of the temporary custody hearing in a care and protection case, if not before, a judge shall be assigned to that case in accordance with procedures established by the Chief Justice of the Juvenile Court. Nothing in this rule shall preclude changing the assignment of a case to, or matters being heard by, a different judge for good cause.

## Rule 13. Discovery

**A. Department or licensed placement agency.** In any care and protection case in which the Department or a licensed placement agency is or becomes a party, the Department or the licensed placement agency shall produce for each party a copy of its entire social services file, including reports made pursuant to G. L. c. 119, § 51A and § 51B, within sixty days from the date the case is commenced, or within sixty days from the date the Department or the licensed placement agency becomes a party, whichever is later. No party receiving material produced pursuant to this rule shall further duplicate or divulge the material to any person not a party to the case unless by order of court, except that counsel for a party may disclose the material to an expert retained by counsel. The expert shall not further duplicate or divulge the material and shall return the material to the counsel that retained him/her.

When producing a copy of its social services file in compliance with this rule, the Department or the licensed placement agency may withhold privileged material and work product of its attorney, and may withhold the names, and other reasonable, identifying data, of past or present foster parents of a child who is a subject of the case or of an adoptive parent or prospective adoptive parent of a child who is a subject of the case or of the reporter on reports made pursuant to G. L. c. 119, § 51A, subject to orders for further production.

The attorney for the Department or the licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department or the licensed placement agency shall have an ongoing duty to produce for each other party on a timely basis any additions to the social services file made after initial production required in this subsection.

**B. Other discovery**. Other discovery may be had only by court order on such terms as the court prescribes. A court order shall be requested by motion in accordance with Rule 7.

**Note**

**Section A.** See Juvenile Court Standing Order 1-84, Juvenile Court Case Records and Reports.

## Rule 14. Status hearing

There shall be a status hearing within ninety days after the commencement of a care and protection case, provided however, that it shall be scheduled to occur after the court investigator's report has been filed. All parties are required to be present with counsel at the status hearing, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the status hearing.

**A. Summons to the court investigator.** The court may issue, or one or more of the parties may request, a summons to the court investigator to attend the status hearing. When so summoned, the court investigator shall attend the status hearing to respond to any questions regarding the process of the investigation or the report filed in accordance with Rule 11 and G. L. c. 119, §§ 21A and 24. Failure of the court investigator to be present without good cause or the report to be available shall not preclude the court from proceeding with the status hearing.

**B. Issues to be addressed.** Unless previously addressed and resolved, at the status hearing the court shall address but is not limited to addressing: the process of the court investigation or the report; service of process in accordance with Rule 5; discovery motions; child identification; the Indian Child Welfare Act; any special evidentiary issues; the Department's plan to achieve permanence; any issues

regarding services being offered or delivered to the family pending trial; the scheduling of a pretrial conference; and compliance with the standing order regarding time standards. Nothing in this rule shall preclude the court from hearing motions, including discovery motions, at other times in the interests of justice.

**C. Court investigator's report.** The court shall attach the court investigator's report to the petition at the status hearing, or at the next court date after the filing of the report. The report shall then become a part of the record in accordance with G. L. c. 119, § 24.

**D. Orders.** At the conclusion of the status hearing, the court shall issue any necessary and appropriate orders to resolve the matters before the court.

**Note**

The purpose of the status hearing is to address any matters that may impact the timely resolution of the case and permanency for the child.

This rule differs from the prior rule in that it provides a uniform procedure to secure the presence of the court investigator and addresses how the court investigator's report becomes part of the record and evidence in the case.

When summoned to attend the status hearing by the Clerk's Office, the court investigator is present to answer any questions from the parties, their attorneys or the court regarding the process of the investigation and to identify sources of information. It is not the purpose of the attendance of the court investigator at the status hearing to address the factual content of the investigator's report, or assess the credibility of the investigator or the reliability of the information in the report. When the court investigator is summoned to attend the status hearing, the court should make every effort to conduct the hearing as early as possible on the scheduled date in order to avoid and/or reduce the wait time for the court investigator.

This rule makes it clear that the court investigator's report automatically becomes part of the record in accordance with G. L. c. 119, § 24. The court investigator's report becomes part of the record and evidence not by its physical "attachment" to the petition but by operation of law. General Laws c. 119, § 24, requires that "the court shall appoint a person qualified under section 21A to investigate the conditions affecting the child and to make a report under oath to the court, which shall be attached to the petition *and be a part of the record*." (emphasis added). Accordingly, the Appeals Court has held that there is "no question that § 24 anticipates use of the report by the trial judge." In re Zita, 455 Mass. 272, 281 (2009) (citing Custody of Two Minors, 19 Mass. App. Ct. 552, 559 (1985)). See also Custody of Michel, 28 Mass. App. Ct. 260, 267(1990). ("Primary reliance concerning the family picture will be on the § 24 report. Such is the import of the statutory language ...")

Because the investigator's report is part of the record of the case, there can be no objection in general to the receipt or use of the investigator's report in arriving at decisions in care and protection cases. Custody of Michel, 28 Mass. App. Ct. at 265. The report may contain hearsay statements from a wide variety of sources and the cases do not distinguish between levels of hearsay. Id. at 266. Parties have a fair opportunity to rebut allegations in the report by cross examining the court investigator and his/her sources or by other means at trial, so it is vital that all sources of statements and information in the report be clearly identified. Specific objections may be made by motions in limine. Custody of Tracy, 31

Mass. App. Ct., 481 (1991) and Custody of Michel. See also Mass. G. Evid. § 1115(c)(1) and (e)(6) regarding court investigator reports in general.

## Rule 15. Pretrial conference in care and protection cases

A pretrial conference shall be scheduled to occur no later than thirty days before the trial on the merits, except for good cause shown provided however, that it shall be scheduled to occur after the date upon which the court investigator's report is due. All parties are required to be present with counsel at the pretrial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pretrial conference.

**A. Witness and exhibits lists.** The parties shall file written witness and exhibit lists with the court at the pretrial conference. As a matter of discretion in a particular case, the trial judge may order the parties to submit a written joint or individual pretrial memorandum that covers any or all of the issues set forth below in subsection B of this rule. Parties shall be bound by the witness and exhibit lists filed separately or set forth in a pretrial memorandum, except by court order for good cause shown.

**B. Issues to be addressed**. At the pretrial conference, the court shall address the matters set forth below:

1. Whether parents have been served by the petitioner and the date(s) of service

2. Whether discovery has been completed; and if discovery has not been completed, a list of discovery items not yet provided and the compliance date

3. Relief sought, including whether or not there will be a request for a decree dispensing with the need for parental consent to the adoption, custody, guardianship or other disposition of the child named in the petition

4. Identification of the specific contested issues to be litigated at trial

5. A stipulation of all uncontested facts and issues

6. A list of proposed exhibits to be introduced at trial

7. A list of proposed witnesses which shall include the names of any expert witnesses, a delineation of the issues to which the expert is expected to testify, and a copy of his or her curriculum vitae

8. Issues regarding the admissibility of evidence at trial

9. Scheduling a date for the submission of motions in limine, if any, and scheduling a hearing thereon, if necessary

10. Any unaddressed motions

11. Whether a writ of habeas corpus will be required to ensure attendance of a party or witness, or whether a witness needs to participate telephonically or by other means

12. Whether an interpreter is required

13. Whether a child witness needs an accommodation to testify

14. Whether, if the Indian Child Welfare Act (ICWA) applies, the tribe has been notified and has responded and whether other legal requirements under ICWA have been satisfied

15. An estimate of trial time

16. Any other matters that may aid in the disposition of the action

The court shall address, where applicable:

17. Whether the possibility of settlement has been discussed

18. Whether counsel for the parties have discussed mediation with their client(s) pursuant to Rule 5 of Rule 1:18 of the Supreme Judicial Court

19. The Department's plan to provide timely notice of the trial to the foster parent, pre-adoptive parent or relative providing care.

**C. Scheduling the hearing on the merits.** At the pretrial conference, unless previously scheduled, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition unless a later date is necessary in the interests of justice.

**Note**

This rule differs from the prior 2007 rule in that it retains the pretrial conference and written witness and exhibit lists but removes the requirement of a written pretrial conference memorandum unless ordered by the trial judge. Pretrial memoranda that contain mere boilerplate paragraphs relative to the issues to be addressed or a list of all possible witnesses are of no value to the court.

In some divisions, proposed exhibits are marked for identification at various stages of the proceedings. In those divisions, when listing exhibits marked for evidence under Rule 15 B. 6, counsel should use the same numbers used by the court to mark the exhibits for identification.

If a date has not been set for the submission of, or to hear, motions in limine, the trial judge should schedule said date(s) at the pretrial conference.

## Rule 16. Notice to foster parent, pre-adoptive parent, or relative providing care for a child

The Department shall file a certification with the court that the Department has provided notice and informed the foster parent, pre-adoptive parent or relative providing care for a child, who is the subject of a care and protection petition, of his/her right to attend and be heard at a hearing held pursuant to G. L. c. 119, §§ 26 and 29B. The certification shall be on a form approved by the Chief Justice of the Juvenile Court. In the event the foster parent, pre-adoptive parent or relative chooses to exercise his/her right to be heard, he/she shall testify in court under oath. Failure by the Department to provide timely notice does not preclude the judge from proceeding with the hearing.

**Note**

General Laws c. 119, § 29D requires the Department to provide notice and inform the foster parent, pre-adoptive parent or relative providing care of a child who is the subject of a care and protection petition of the right to attend and be heard at hearings pursuant to G. L. c. 119, §§ 26 and 29B. This includes hearings on the merits, (including the termination or so called "best interests" hearing) review and

redetermination hearings, and permanency hearings. The statute expressly provides that the foster parent, pre-adoptive parent or relative does not become a party to the case by exercising his/her right to attend and be heard. Although the rule provides that the hearing may proceed in the absence of timely notice by the Department, the court may provide an opportunity for the foster parent, pre-adoptive parent or relative to be heard on another date. The rule does not require the foster parent, pre-adoptive parent or relative to inform the court in advance of the hearing of his/her intention to attend and be heard but he/she may do so. See Adoption of Sherry, 435 Mass. 331 (2001) (usual rules of evidence apply; testimony of foster parent must be under oath and subject to cross examination; unsworn written statement is inadmissible.)

## Rule 17. Sanctions and contempt

**A. Sanctions**. If a party, or an attorney, or both, engages in conduct that either delays the progress of litigation, wastes judicial resources or causes an unnecessary increase in expenses on a party, or otherwise impedes the full and effective administration of justice, without sufficient justification as determined by the court, the court may order the party, or the attorney, or both to pay reasonable costs and expenses. The court shall provide notice and a hearing before final imposition of costs or expenses. The court shall articulate, in writing, the reasons for the imposed sanctions.

**B. Contempt.** Enforcement of compliance with court orders may be sought by means of civil contempt, which shall proceed in accordance with the provisions of Mass. R. Civ. P. 65.3 (b) - (h). Proceedings for summary contempt shall be held in accordance with the provisions of Mass. R. Crim. P. 43. Prosecutions for criminal contempt shall proceed in accordance with the provisions of Mass. R. Crim. P. 44.

## Rule 18. Subpoenas

Subpoenas shall be served and enforced as provided by Mass. R. Civ. P. 45 and may be issued by the Clerk's Office or as otherwise provided in Mass. R. Civ. P. 45.

## Rule 19. Trial judge's order, findings of fact and conclusions of law and notification by clerk of issuance of findings of fact and conclusions of law

**A. Entry of adjudication, order of commitment, order dispensing with the need for consent to adoption, allowance or denial of guardianship petition.** Upon adjudication, order of commitment, or order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child or an allowance or denial of a guardianship petition, the clerk shall forthwith enter that adjudication, order, allowance or denial on the court's docket. If the court issues a permanent mittimus or grants permanent custody of a child to the Department, the court shall schedule the case for review which shall be no later than six months from the date of the mittimus or custody order and every six months thereafter until permanency has been achieved for the child.

**B. Notice.** Immediately following the clerk's entry of the above adjudication, order, allowance or denial on the docket, the clerk shall notify all attorneys of record and parties who are self-represented by mail or electronically, of the entry of that adjudication, order, allowance or denial. The clerk shall note on the docket, or otherwise record electronically, the names of the persons to whom the notice was sent, with the date notified. This notice shall include: 1) a copy of the adjudication, order, allowance or denial; 2) the date of the clerk's entry; and 3) notice that each party has thirty (30) days from the date of entry within which to file a claim of appeal.

**C. Order or decree dispensing with consent to adoption.** In all cases in which the court issues an order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child, the court shall enter the order or decree on a document separate from any findings of fact and conclusions of law.

**D. Trial judge's findings of fact and conclusions of law.** The trial judge, upon making an adjudication or issuing an order of commitment or an order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child, shall file with the clerk, consistent with time standards promulgated by the Chief Justice of the Juvenile Court, findings of fact and conclusions of law to support the order and/or adjudication.

**E. Notification to all parties by clerk.** Immediately upon the filing of the findings of fact and conclusions of law, the clerk shall mail or transmit a copy to each attorney of record and party who is self-represented.

**Note**

After an adjudication, the judge may make any appropriate dispositional order including conditions and limitations relative to the care and custody of the child. The dispositional order may include, but is not limited to, reunification with the parent, guardian, or other custodian found by the court to be qualified to care for the child; custody to any agency or private organization licensed or otherwise authorized to provide care for the child; or custody to the Department. G. L. c. 119, § 26(b).

Although issuance of a permanent mittimus or grant of permanent custody to the Department is a permissible post-adjudication order under § 26(b), these alternatives are not considered to be permanent plans for children under Rule 9(a)(1) of Trial Court Rule VI Uniform Rules for Permanency Hearings. Accordingly, this rule requires the court to schedule a review of these cases no later than six months after the date of the issuance of a permanent mittimus or order of permanent custody to the Department and every six months thereafter until the child is returned to his/her parents, is adopted, is placed with a third party custodian, a permanent guardian is appointed, or the child ages out of the system.

While an alternative planned permanent living arrangement ("APPLA") is considered to be a possible permanency plan for a child sixteen years of age or over under Rule 9(a)(1) of the Uniform Rules for Permanency Hearings, it does not achieve legal permanency for the child. Therefore, if APPLA is approved by the court as the permanency plan, the court must schedule a review of the case every six months thereafter until the child is returned to his/her parents, is adopted, is placed with a third party custodian, a permanent guardian is appointed, or the child ages out of the system. The review required in section A of this rule is different from the right of review and redetermination under G. L. c. 119, § 26(c); rather it is established by this rule to permit the court to assess progress toward permanency in keeping with the best practices for achieving legal permanency for children.

## Rule 20. Appeal

**A. Claim of appeal.** An appeal, as permitted by G. L. c. 119, § 27, shall be governed by the Massachusetts Rules of Appellate Procedure. The claim of appeal shall be on a form approved by the Chief Justice of the Juvenile Court and shall be taken to constitute the "notice of appeal" for the purposes of complying with the Massachusetts Rules of Appellate Procedure. The claim of appeal and any request for a transcript, if

required, shall be signed by the appealing party or parties unless the appellant is the child; a claim of appeal that is not so signed by the party or parties shall not be accepted for filing by the clerk.

B. Record on appeal. In addition to the requirements of the Rules of Appellate Procedure, the record on appeal as assembled shall include a copy of the trial judge's findings of fact and conclusions of law.

# Juvenile Court Standing Orders

## Standing Order 1-82: Court Hours

The hours during which the Divisions of the Juvenile Court Department shall be open for business to the general public shall be 8:30 a.m. to 4:30 p.m., Monday through Friday.

*Adopted February 3, 1982.*

## Standing Order 1-84: Juvenile Court Case Records and Reports

All juvenile court case records and reports are confidential and are the property of the court.

Reports loaned to or copied for attorneys of record, or such other persons as the court may permit, shall be returned to the court after their use or at the conclusion of the litigation, whichever occurs first.

Said reports shall not be further copied or released without permission of the court.

*Adopted May 8, 1984.*

## Standing Order 2-04: Electronic Recording of Court Proceedings

See also:

Newer Standing Order 2-09: Sound Recording of Court Proceedings

A. Official Recordings.

1. When required. In all divisions of the Juvenile Court Department all courtroom proceedings shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; and (b) proceedings conducted by a magistrate other than a judge. Said recording shall take place whether or not a court stenographer is present in the courtroom.

2. Logging. During every proceeding which is required to be recorded, the clerk shall: (a) announce clearly the name of the case and its docket number at the beginning of the proceeding; and (b) note, whenever practicable, on the case papers or in a separate log the cassette number and the index numbers representing the beginning and end points of the proceeding.

3. Counsel's responsibility. Counsel shall be responsible for assisting in the creation of an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to ensure an audible record, and shall be responsible for requesting the judge, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to ensure an audible record.

4. Preservation of tapes. The clerk-magistrate shall preserve for at least three years the original recording of any trial, evidentiary hearing, guilty plea or admission to sufficient facts that was presided over by a judge.

5. Access to cassette copies.

(a) Open proceedings. Any person whether or not a party, shall be permitted to obtain a cassette copy of an original recording, or any portion thereof, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded.

(b) Closed proceedings. The original recording of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and a cassette copy of the original recording, or any portion thereof, shall be made available only in accordance with the following provisions:

(i) Cassette copies of closed proceedings for purposes of appeal. Counsel for any party, or any party who has entered an appearance pro se, shall be permitted to obtain a cassette copy of such a proceeding upon certifying that such cassette copy will be used solely for an appeal, or to determine whether to claim an appeal, in the same matter. Unless the judge who presided over the proceeding has ordered otherwise, the clerk-magistrate shall provide such cassette copy upon such certification without requiring a judge's approval of the request.

(ii) Cassette copies of closed proceedings for other purposes. A cassette copy of such a proceeding may be made available to other persons or for other purposes only with the approval of the judge who presided over the proceeding or, if that judge is unavailable for an extended period or the proceeding was conducted by a magistrate other than a judge, any judge of the court. Any such request shall be accompanied by an affidavit, setting forth the reason for the request and the specific use to be made of the cassette copy, and shall be served on all parties to the proceeding. Any other party or interested person may file a statement in support of or in opposition to such a request. A judge may determine such a request with or without hearing wherever he or she is then sitting. A judge may permit access subject to appropriate restrictions upon the use and dissemination of the cassette copy of such proceeding.

(c) Ordering cassette copies. A request for a cassette copy shall be filed with the clerk-magistrate on a form prescribed by the Chief Justice of the Juvenile Court. In order that multiple cassette copies may be made simultaneously whenever possible, any person making such a request regarding a proceeding that is presently pending on appeal shall certify that he has notified all other parties of his request.

The cost of a cassette copy shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B. The clerk-magistrate may require prepayment of all or some portion of such cost. There shall be no cost for a cassette copy produced for the use of the court, the Attorney General's office, a district attorney's office, any other agency of the Commonwealth, a police prosecutor, or a party represented by an attorney provided by the Committee for Public Counsel Services. General Laws c. 261, ss. 27A-27G shall apply to any request on behalf of an indigent party who is not represented by an attorney provided by the Committee for Public Counsel Services, and in such case the cost of a cassette copy shall be deemed an "extra cost" as defined in s. 27A.

6. Impermissible uses. No cassette copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose detrimental to the administration of justice. No cassette copy shall be duplicated or tampered with. No cassette copy shall be erased, nor its labels removed or defaced, while the matter is pending in any court, or is subject to direct appellate review. Any cassette copy which is thereafter erased shall be erased in its entirety.

Any further dissemination of the cassette copy of a closed proceeding, or its contents, is permissible only: (a) for the purposes for which access was permitted; (b) subject to all provisions of law and court rules governing the records of such closed proceedings; and (c) subject to any additional restrictions with regard to its use which have been prescribed by the judge permitting access.

Any person requesting a cassette copy shall take all reasonable precautions to assure compliance with the requirements of this rule, including notifying anyone permitted to use the cassette copy of such requirements. Any person violating any such requirement shall be subject to appropriate sanctions, including contempt proceedings.

B. Unofficial recordings.

1. Covert recording forbidden. No person shall make any electronic recording in any courtroom, hearing room, office, chambers or lobby of a judge or magistrate without prior authorization from the judge or magistrate then having immediate supervision over such place.

2. Recording by the news media. The recording by the news media of a proceeding open to the public is governed by the provisions of Supreme Judicial Court Rule 1:19.

*Added October 13, 2004, effective November 1, 2004.*

## Standing Order 1-09: Application of G. L. c. 190B, Article V to Guardianship of a Minor Cases Pending On July 1, 2009 or With a Decree Issued Prior Thereto

On July 1, 2009, certain provisions of the Massachusetts Uniform Probate Code, G.L. c. 190B (Code), become effective. The provisions are primarily contained in Article V of the Code, Protection of Persons under Disability and Their Property. The Code significantly reforms the practice of guardianship law.

The Massachusetts Uniform Probate Code applies to any guardianship case:

(a) where a permanent decree has previously entered and the guardianship has not terminated;

(b) pending on July 1, 2009 without a permanent decree having entered; or

(c) commenced on or after July 1,2009. Accordingly:

1. PENDING CASES WITH NO PERMANENT DECREE

Any Petition for Guardianship of the Minor pending before July 1, 2009 does not require amendment or the filing of a new petition.

2. CASES WHERE A GUARDIAN OF THE MINOR WAS APPOINTED BEFORE JULY 1, 2009

A. Issuance of Letters of Appointment.

When any party seeks a certified copy of the Decree appointing the guardian of the minor, Letters of Appointment of Guardian shall issue in accordance with the prior Decree and encompass duties and responsibilities set forth in the Code.

B. Reporting Requirements

Guardians of minors are required, at a minimum, to file a report on the condition of the minor and the condition of the estate of the minor within one year following the anniversary date of their appointment, but no later than July 1, 2010, whichever comes first. Whenever any guardian of the minor is before the court, the court shall ensure the timely filing and review of any and all reports.

*Adopted June 22, 2009, effective July 1, 2009.*

## Standing Order 2-09: Sound Recording of Court Proceedings

A. DEFINITIONS.

1. Sound Recording: a recording, such as but not limited to a cassette tape or compact disc, used to store recorded sound.

B. OFFICIAL RECORDINGS.

1. When Required. In all divisions of the Juvenile Court Department all courtroom proceedings shall be recorded, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; and (b) proceedings conducted by a magistrate other than a judge. Said recording shall take place whether or not a court stenographer is present in the courtroom.

2. Logging. During every proceeding which is required to be recorded, the clerk shall: (a) announce clearly the name of the case and its docket number at the beginning of the proceeding; and (b) log, whenever practicable, the sound recording number and the index numbers or dates representing the beginning and end points of the proceeding.

3. Counsel's Responsibility. Counsel shall be responsible for assisting in the creation of an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to ensure an audible record, and shall be responsible for requesting the judge, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to ensure an audible record.

4. Preservation of Recordings. The clerk-magistrate shall preserve for at least three years the original recording of any trial, evidentiary hearing, guilty plea or admission to sufficient facts that was presided over by the judge.

5. Access to Copies of Sound Recordings.

(a) Open proceedings. Any person whether or not a party, shall be permitted to obtain a sound recording copy of an original recording, or any portion thereof, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded.

(b) Closed proceedings. The original recording of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and a sound recording copy of the original recording, or any portion thereof, shall be made available only in accordance with the following provisions:

(i) Sound recording copies of closed proceedings for purposes of appeal. Counsel for any party, or any party who has entered an appearance pro se, shall be permitted to obtain a sound recording copy of the original recording of such a proceeding upon certifying that such sound recording copy will be used solely for an appeal, or to determine whether to claim an appeal, in the same matter. Unless the judge who presided over the proceeding has ordered otherwise, the clerk-magistrate shall provide such sound recording copy upon such certification without requiring a judge's approval of the request.

(ii) Sound recording copies of closed proceedings for other purposes. A sound recording copy of such a proceeding may be made available to other persons or for other purposes only with the approval of the judge who presided over the proceeding or, if that judge is unavailable for an extended period or the proceeding was conducted by a magistrate other than a judge, any judge of the court. Any such request shall be accompanied by an affidavit, setting forth the reason for the request and the specific use to be made of the sound recording copy, and shall be served on all parties to the proceeding. Any other party or interested person may file a statement in support of or in opposition to such a request. A judge may determine such a request with or without hearing wherever he or she is then sitting. A judge may permit access subject to appropriate restrictions upon the use and dissemination of the sound recording copy of such proceeding.

(c) Ordering sound recording copies. A request for a sound recording copy shall be filed with the clerk-magistrate on a form prescribed by the Chief Justice of the Juvenile Court. In order that multiple sound recording copies may be made simultaneously whenever possible, any person making such a request regarding a proceeding that is presently pending on appeal shall certify that he has notified all other parties of his request. The cost of a sound recording copy shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B. The clerk-magistrate shall require prepayment of all or some portion of such cost. There shall be no cost for a sound recording copy produced for the use of the court, the Attorney General's office, a district attorney's office, any other agency of the Commonwealth, a police prosecutor, or a party represented by an attorney provided by the Committee for Public Counsel Services. General Laws c. 261, ss. 27A-G shall apply to any request by a party who is not represented by an attorney provided by the Committee for Public Counsel Services, and in such case the cost of a sound recording copy shall be deemed an "extra cost" as defined in s. 27A.

6. Impermissible Uses. No sound recording copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose detrimental to the administration of justice. No sound recording copy shall be duplicated or tampered with. No sound recording copy shall be erased, nor its labels removed or defaced, while the matter is pending in any court, or is subject to direct appellate review. Any sound recording copy which is thereafter erased shall be erased in its entirety.

Any further dissemination of the sound recording copy of a closed proceeding, or its contents, is permissible only: (a) for the purposes for which access was permitted; (b) subject to all provisions of law and court rules governing the records of such closed proceedings; and (c) subject to any additional restrictions with regard to its use which have been prescribed by the judge permitting access.

Any person requesting a sound recording copy shall take all reasonable precautions to assure compliance with the requirements of this rule, including notifying anyone permitted to use the sound recording copy of such requirements. Any person violating any such requirement shall be subject to appropriate sanctions, including contempt proceedings.

C. UNOFFICIAL RECORDINGS.

1. Covert Recording Forbidden. No person shall make any recording in any courtroom, hearing room, office, chambers or lobby of a judge or magistrate without prior authorization from the judge or magistrate then having immediate supervision over such place.

2. Recording by the News Media. The recording by the news media of a proceeding open to the public is governed by the provisions of Supreme Judicial Court Rule 1:19.

*Adopted October 7, 2009, effective November 1, 2009.*

## Standing Order 1-10: Scheduling Care and Protection and Termination of Parental Rights Trials

1. Purpose. The purpose of this Standing Order is to establish procedures and standards and promote uniformity to ensure that care and protection and termination of parental rights trials are completed within a reasonable time after commencement of trial.

2. Applicability. This Standing Order is applicable to all Divisions of the Juvenile Court and to all care and protection and termination of parental rights trials.

3. Definitions. Commencement of Trial - the date when testimonial evidence is presented by witnesses called to testify before the court; the date that a document is submitted to the court, accepted and admitted into evidence as an exhibit. Close of Evidence - the date when all parties have completed the submission of all evidence.

4. Length of Trial. All care and protection and termination of parental rights trials will conclude no later than thirty (30) calendar days after commencement of trial. Trial dates should be scheduled for consecutive days, whenever possible. Potential exhibits should be "marked for identification" prior to the commencement of trial whenever possible.

5. Cases Under Advisement. An adjudication that a child is, or is not, in need of care and protection, or an order terminating, or a decision not to terminate, parental rights shall be made no later than thirty (30) days after the close of evidence.

6. Emergency Extension for Trial or Cases Under Advisement. In extraordinary circumstances, the justice presiding over the trial may request approval from the Chief Justice to extend the time for trial, or extend the time for adjudication, order or decision, for an additional fifteen (15) calendar days. Such request should be submitted in writing, should identify the extraordinary circumstances that necessitated the request and should· be submitted no later than ten (10) calendar days prior to the expiration of the thirty (30) day period, except when the request for additional time is due to unforseen circumstances which occur subsequent to the ten (10) calendar day period.

8. Dedicated Trial Sessions. Dedicated trial sessions for care and protection and termination of parental rights cases are encouraged where there are available judicial resources, sufficient attorneys to represent the parties and where multiple demands upon court time do not make such sessions impractical and inefficient.

9. Effective Date. This Standing Order and the procedures and standards contained herein shall apply to all care and protection and termination of parental rights trials commenced on or after September 1, 2010.

*Adopted July 13, 2010, effective: September 1, 2010.*

## Standing Order 1–15: Provision of respondents' non-clinical identifying information in commitment proceedings under G. L. c. 123, §§ 7, 8, and 12(e), or G. L. c. 123, § 35

The purpose of this Order is to provide for the collection of non-clinical identifying information in commitment proceedings in the Juvenile Court Department necessary to comply with the courts' reporting requirements pursuant to **Chapter 284, Acts of 2014**, An Act Relative to the Reduction of Gun Violence.[(1)]

IT IS THEREFORE ORDERED:

An applicant seeking a court order to commit a respondent to a mental health facility pursuant to **G.L. c. 123, § 12(e)**, a petitioner seeking a court order to commit or retain a respondent for inpatient care pursuant to **G.L. c. 123, §§ 7** and **8**, and a petitioner seeking a court order to commit a respondent for treatment for alcoholism and/or substance abuse pursuant to **G.L. c. 123, § 35**, shall provide the respondent's date of birth and social security number, if available, to the court.

[(1)] Although commitment matters are also brought under **G.L. c. 123, §§ 15(b)**, **16(b) or (c)**, or **18** that arise out of criminal proceedings, the respondent's or defendant's date of birth and social security number is obtained and provided to the court through the Defendant Identification Information System in those cases.

## Standing Order 2–15: Relief from notification requirements of Rule 13(b) of the Trial Court Rule VIII, Uniform Rules of Impoundment Procedure

Any party or interested nonparty filing materials in a Juvenile Court case that is impounded by statute, caselaw, court rule or standing order, is not required to file a notice identifying the case and/or the material as 'impounded' as required by **Rule 13(b)** of the Uniform Rules of Impoundment Procedure. In the Juvenile Court, any cases or case records that are confidential or not available for public inspection are considered to be impounded by statute, caselaw, court rule or standing order. These cases include but are not limited to care and protection and delinquency cases. **Rule 13(b)** of the Uniform Rules of Impoundment Procedure applies only to Juvenile Court cases and case records that are open to the public and to public inspection, such as Youthful Offender and adult criminal cases.

## Standing Order 1-17: Violation of probation proceedings

**I. Scope and purpose**

This standing order prescribes procedures in the Juvenile Court to be followed upon the allegation of a violation of an order of probation issued in a delinquency, youthful offender or criminal case after a finding of delinquency, youthful offender, or guilty, or after a continuance without a finding. This standing order does not apply to an alleged violation of pretrial probation, as the latter term is defined herein.

The purpose of this standing order is to ensure that judicial proceedings undertaken upon the allegation of a violation of probation are conducted in a manner consistent with the Commonwealth's policy regarding children as set forth in G. L. c. 119 and in full compliance with all applicable law, promptly and with an appropriate degree of procedural uniformity. This standing order supersedes Standing Order 1-07 Violation of Probation Proceedings.

**Commentary**

The first purpose of the violation hearing is to adjudicate the factual question of whether a probationer has violated his or her probation order. The second purpose is to revoke probation or order any other disposition. The issue of violation is essentially a *factual* matter whereas the dispositional decision of whether to revoke probation is essentially a matter of *discretion*.

Throughout this standing order the person who is the subject of probation violation proceedings is usually referred to as the "probationer" rather than the "defendant." With respect to the probation proceedings, such a person is not a defendant; he or she has either been adjudicated or convicted, after trial or based on a plea of delinquent, youthful offender or guilty, or has formally submitted an admission to the facts of a criminal charge. Use of the term "probationer" is intended to underscore the legal status of the person charged with a probation violation, which is fundamentally distinct from the status of a person who is a defendant on a delinquency, youthful offender or criminal case, particularly in terms of procedural rights.

**II. Definition of terms**

In construing this standing order, the following terms shall have the following definitions:

"Continuance without a finding" is the order of a court, following a formal submission and acceptance of a plea of guilty or an admission to sufficient facts in a youthful offender case or criminal case; or, in a delinquency case, following a formal submission and acceptance of a plea of delinquency or an admission to sufficient facts or after a trial in which the allegations are proven beyond a reasonable doubt, whereby the case is continued to a date certain without the formal entry of a delinquency, youthful offender, or guilty finding. A continuance without a finding may include conditions imposed in an order of probation (1) the violation of which may result in the revocation of the continuance, entry of a finding of guilty, youthful offender or delinquency and imposition of sentence or commitment to the Department of Youth Services and (2) compliance with which will result in dismissal of the case.

"Defendant" is a juvenile adjudged delinquent or youthful offender or an adult convicted of a crime.

"District Attorney" is the criminal prosecuting authority and includes the Attorney General if the delinquency, youthful offender, or criminal case in which probation was ordered was prosecuted by the Office of the Attorney General.

"General conditions of probation" are the conditions of probation that are imposed as a matter of course in every order of probation, as set forth in the official form promulgated by the Chief Justice of the Juvenile Court for such orders.

"Probation order" is the formal, written court order whereby a defendant is placed on probation and which expressly sets forth the conditions of probation. A probation order is not a contract.

"Pretrial probation" is the probationary status of a defendant pursuant to a probation order issued prior to a trial or prior to the formal submission and acceptance of a plea of delinquent, youthful offender or guilty, or prior to an admission to sufficient facts, as provided in G. L. c. 276, § 87.

"Revocation of probation" is the revocation by a judge of an order of probation as a consequence of a determination that a condition of that probation order has been violated.

"Special conditions of probation" are any condition of probation other than one of the general conditions of probation.

"Surrender" is the procedure by which a probation officer requires a probationer to appear before the court for a judicial hearing regarding an allegation of a probation violation.

**III. Commencement of violation proceedings: Charged criminal conduct**

**(a) General.**

This standing order prescribes the procedures to be undertaken upon the issuance of a delinquency or criminal complaint or youthful offender indictment against a probationer.

**(b) Where Probation Order and Delinquency or Criminal Complaint or Youthful Offender Indictment Involve Same Court Division.**

*(i) Issuance and Service of Notice of Violation; Termination of Proceedings; Withdrawal of Notice of Violation*. When a delinquency or criminal complaint is issued by a court division or a youthful offender indictment is returned by a grand jury and remitted to a court division of the Juvenile Court against a defendant who is the subject of a probation order previously issued by that same court division, the Probation Department shall commence violation proceedings against that probationer. Such proceedings shall be commenced by the issuance by the Probation Department of a Notice of Probation Violation/Hearing at or before the arraignment on the delinquency or criminal complaint or youthful offender indictment, or as soon thereafter as possible. The Notice shall be served on the probationer in hand following the assignment of a date and time for a probation violation hearing as provided in Section III(b)(ii) and such service shall be entered in the case docket, provided that if such in-hand service is not possible, the Notice shall be served on the probationer by first-class mail, unless the court orders otherwise. Service of the Notice by first-class mail shall be entered in the case docket. Out of court service other than by mail shall require a written return of service. The Probation Department shall provide a copy of each Notice of Probation Violation/Hearing to the District Attorney forthwith upon its issuance.

At any time during violation proceedings, the court, upon review of the Notice and as a matter of its discretion, may order termination of the proceedings. A Notice of Probation Violation may be withdrawn

only with the permission of the court and such withdrawal and permission shall be entered in the case docket.

*(ii) Contents of Notice of Violation*. The Notice of Probation Violation/Hearing shall set forth the criminal conduct alleged to have been committed by the probationer as indicated in the delinquency or criminal complaint or youthful offender indictment, and shall set forth any other specific conditions of the probation order that the Probation Department alleges have been violated with a description of each such alleged violation. The Notice shall also state the date, time, and place of the probation violation hearing.

*(iii) Scheduling of Hearing*. The probation violation hearing shall be scheduled to commence on the date of the pretrial hearing for the new delinquency or criminal complaint or youthful offender indictment, unless the court expressly orders an earlier hearing. The hearing shall be scheduled for a date certain no less than seven days after service on the probationer of the Notice of Violation/Hearing unless the probationer waives said seven day notice period. The hearing date shall not be later than fifteen days after service of the Notice of Violation/Hearing without the probationer's consent if he or she is held pursuant to Section V of this standing order. In any case, the hearing shall not be later than thirty days after service of the Notice of Violation/Hearing, except in extraordinary circumstances. In scheduling the pretrial hearing on the new delinquency or criminal complaint or youthful offender indictment together with the probation violation hearing, the court shall give primary consideration to the need for promptness in conducting the probation violation hearing.

**(c) Where Probation Order and Delinquency or Criminal Complaint or Youthful Offender Indictment Involve Different Divisions.**

*(i) Issuance and Service of Notice of Violation*. When a delinquency or criminal complaint is issued by a court division of the Juvenile Court or a youthful offender indictment is returned by a grand jury (hereinafter the "criminal court") against a defendant who is the subject of a probation order issued by a different court division of the Juvenile Court Department (hereinafter the "probation court"), the Probation Department in the criminal court shall issue a Notice of Probation Violation/Hearing to the probationer at or before arraignment on the new delinquency or criminal complaint or youthful offender indictment, or as soon thereafter as possible. The Notice, as provided in paragraph (c)(ii) below, shall be served on the probationer in hand and such service shall be entered in the case docket. Nothing in this section shall preclude the later issuance and service on the probationer of a Notice of Probation Violation/Hearing by the Probation Department of the probation court.

*(ii) Contents of Notice of Violation*. The Notice of Probation Violation/Hearing shall set forth the name of the probation court and criminal conduct alleged to have been committed by the probationer as indicated in the delinquency or criminal complaint or youthful offender indictment and shall order the probationer to appear at a specific date and time at the probation court for the express purpose of appointment of counsel, if necessary, and scheduling of a probation violation hearing.

*(iii) Transmission of Notice of Violation and Other Documents to Probation Court*. Prior to the service of the Notice of Violation/Hearing on the probationer, the Probation Department at the criminal court shall send to the probation officer on duty in the probation court or, if there is no probation officer on duty, to the Chief Probation Officer at the probation court, by electronic transmission, copies of the following documents: the notice of violation; the delinquency or criminal complaint or youthful offender

indictment and related police report on the new criminal charge that constitutes the alleged probation violation; and a request for the following information: whether the probation court recommends that the probationer be transported in custody, and, if not, the date and time for the non-custodial appearance of the probationer at the probation court.

*(iv) Response by the Probation Court*. At the probation court, the probation officer on duty, the Chief Probation Officer, an Assistant Chief Probation Officer, or a probation officer designated by either shall respond by electronic transmission to the request for information no later than one hour from receipt thereof. The response shall include a recommendation on whether the probationer should be transported to the probation court in custody, and, if not, the date and time for the probationer's non-custodial appearance at the probation court.

*(v) The Decision to Transport*. A judge at the criminal court shall decide whether the probationer is to be transported in custody to the probation court. The judge shall provide the probationer an opportunity to be heard and, unless exceptional circumstances require otherwise, shall wait at least one hour for receipt of the recommendation from the probation court before making such decision. If the criminal court orders custodial transport, it shall issue a probation transportation order on behalf of the probation court, and the probation court shall be so notified. The probationer promptly shall be transported in accordance with the probation transportation order, provided that, if the probationer is held in custody in the criminal proceeding, the probation transportation order shall be lodged with custodial authority to ensure that the probationer will be detained and transported to the probation court. The Probation Department at the criminal court shall so notify the Probation Department at the probation court.

If the criminal court decides not to order custodial transport, it shall enter the probation court appearance date and other required information on the notice of violation and serve it on the probationer in accordance with Section III (c)(i). For good cause, the criminal court may hold the probationer in custody pending its decision regarding custodial transport. Nothing in this rule shall preclude the issuance of an arrest warrant for a violation of probation by the probation court to secure the appearance of a probationer for a probation violation proceeding.

*(vi) Probationer's Appearance at the Probation Court; Service of a New Notice*. Upon appearance of the probationer at the probation court, the court shall appoint counsel, if necessary, and shall schedule a probation violation hearing for a date certain, the date to be no less than seven days later unless the probationer waives said seven-day period. The hearing date shall not be later than fifteen days after said appearance without the probationer's consent if he or she is held pursuant to Section V of this standing order, or in any case no later than thirty days after said appearance, except in extraordinary circumstances. If the Probation Department at the probation court alleges additional violations, it shall prepare and serve on the probationer a new Notice of Probation Violation/Hearing which shall set forth all alleged violations. The Notice shall also include the date, time and place of the violation hearing and shall be served on the probationer in hand while he or she is before the court, or as soon thereafter as possible. Such service shall be entered in the case docket. The Probation Department shall provide a copy of the new Notice to the District Attorney at the time of, or before such service on the probationer.

At any time during the proceeding, the probation court, upon review of the Notice and as a matter of its discretion, may order termination of the proceedings The Notice may be withdrawn only with the

permission of the court and such withdrawal and permission shall be set forth on the record and entered in the case docket.

*(vii) Procedure When a Defendant is a Probationer in More than One Other Court Division within the Juvenile Court*. When a defendant appearing in a court division on a new delinquency, youthful offender, or criminal charge is on probation at more than one other court division within the Juvenile Court, the criminal court shall select one of the latter divisions to be the probation court and shall issue a Notice of Violation/Hearing for that division. The criminal court shall interact as provided in this section with the selected probation court. The other probation court or courts each shall be responsible for the issuance and service on the probationer of a Notice of Violation/Hearing based on the new criminal conduct, and for securing the presence of the probationer for a violation hearing by means of such Notice or by means of an arrest warrant for a violation of probation or other process.

**(d) When Probation Order and New Criminal Charge Involve Different Court Departments.**

When a criminal complaint is issued by a court or an indictment is returned against a defendant who is the subject of a probation order issued by a court in a different court department, the criminal and probation court personnel shall proceed in accordance with Trial Court Standing Order 2-16, Uniform Interdepartmental Procedures for Probation Violation Proceedings.

**Commentary**

This section involves cases in which an alleged probation violation consists of new criminal conduct charged against the probationer. Such cases can arise in two contexts: where the probationer is on probation at the same court division that issued the new charges (the "same court" situation), and where the new charges were issued by a court division or department other than the one where the probationer is on probation (the "different court" situation).

For both situations, this section contains a provision by which a Notice of Probation Violation/Hearing may be "withdrawn." Such withdrawals have been a method by which probation violation proceedings may be terminated. There has been no requirement for court approval or permission. The provision imposes two new requirements: (1) that such withdrawals must receive the permission of the court, and (2) that such permission and the fact of the withdrawal must be entered on the case docket. By requiring judicial permission and entry on the record, the provision reflects the importance of a process by which a probation violation proceeding that has been formally commenced may be terminated without adjudication.

New subsections (c)(iii) – (v) have been added to provide a detailed process by which, in the "different court" situation, the "criminal court" must interact with the "probation court." The purpose of this interaction is to effect the transfer of the probation proceeding and, in some instances, the custodial transfer of the probationer, to the probation court.

Under the former procedure, the decision to transport a probationer was made at the probation court, a warrant issued there and was sent to the criminal court. This meant that a probation officer had to seek the issuance of a warrant by a judge of that court, a judge who was otherwise unaware of the matter and was usually engaged in that court's daily business. This would often delay the process,

particularly in those cases where the judge at the probation court required a more detailed description of the underlying allegations before issuing the warrant.

This standing order has been changed because the judge in the criminal court will be addressing an issue in a case that is before the court at that time, will be immediately aware of the criminal case which constitutes the alleged probation violation, and will have all relevant information regarding the probationer's criminal record and pending probation status.

Section (c)(vii) has been added to address a circumstance not previously addressed, namely, where the defendant before the criminal court is currently on probation in more than one other court division within the Juvenile Court. It provides that in such cases the judge at the criminal court must decide the probation court with which the criminal court will interact. This decision will determine which of the probation courts will be "first in line" to address the probationer's alleged violation based on new charged criminal conduct. The standing order provides that the other courts at which the individual is on probation are responsible for charging the new criminal conduct as an alleged violation, and initiating a violation proceeding by issuing a Notice of Violation/Hearing and mailing it to the probationer or obtaining the appearance of the probationer by means of an arrest warrant for a violation of probation or other process such as a writ of habeas corpus.

**IV. Commencement of violation proceedings: Violations other than new charged criminal conduct**

**(a) General.** This section prescribes the procedures to be undertaken regarding alleged violations of probation that do not involve or include criminal conduct charged in a new delinquency or criminal complaint or youthful offender indictment.

**(b) Issuance and Service of Notice; Termination of Proceedings, Withdrawal of Notice.** When a probation officer of a court division that has issued a probation order determines that a probationer has violated any condition of that order other than alleged criminal conduct as charged in a new delinquency or criminal complaint or youthful offender indictment, that probation officer shall decide whether to commence probation violation proceedings. Such decision shall be made in accordance with the rules and regulations of the Office of the Commissioner of Probation, provided, however, that probation violation proceedings shall be commenced (1) upon the issuance of a criminal complaint or indictment, (2) when the judge issuing the probation order orders that such proceedings are to be commenced upon an alleged violation of one or more conditions of probation, or (3) when the commencement of such proceedings is required by statutory mandate. In any case, a judge of the court division may order the commencement of violation proceedings.

Violation proceedings shall be commenced by the issuance by the Probation Department of a Notice of Probation Violation/Hearing which shall be served on the probationer in hand or by first-class mail, unless the court orders otherwise. Service of the Notice in hand or by first- class mail shall be entered in the case docket. Out-of-court service other than by first-class mail shall require a written return of service. The Probation Department shall provide a copy of each Notice of Probation Violation/Hearing to the District Attorney forthwith upon its issuance.

If deemed appropriate, because of the seriousness of the alleged violation or for other good reason, the court may issue an arrest warrant for a violation of probation. The clerk shall forthwith enter such

warrant in the Warrant Management System. Upon the probationer's first appearance before the court, the probationer shall be served in hand with the Notice of Violation/Hearing.

At any time during the proceedings, the court, upon review of the Notice and as a matter of its discretion, may order termination of the proceedings. The Notice may be withdrawn only with the permission of the court and such withdrawal and permission shall be set forth on the record and entered in the case docket.

**(c) Contents of Notice.** The Notice of Probation Violation/Hearing shall set forth the conditions of the probation order that the Probation Department alleges have been violated and shall order the probationer to appear at a specific date and time for the express purpose of the appointment of counsel, if necessary, and the scheduling of a probation violation hearing.

**(d) Scheduling of Hearing**. Upon appearance of the probationer in accordance with the Notice required by paragraph (c) above, the court shall appoint counsel, if necessary, and schedule a probation violation hearing for a date certain, said date to be no less than seven days later unless the probationer waives said seven-day notice period. The hearing date shall not be later than fifteen days after said appearance without the probationer's consent if he or she is held pursuant to Section V of this standing order, or in any case no later than thirty days after said appearance, except in extraordinary circumstances.

**V. Probation detention hearings**

**(a) Purpose.**

A probation detention hearing may be conducted to determine whether a probationer shall be held in custody pending the conduct of a probation violation hearing. The issues to be decided at a probation detention hearing are whether probable cause exists to believe that the probationer has violated a condition of the probation order, and, if so, whether the probationer should be held in custody.

**(b) Notice of Hearing.**

The probationer shall be given a written notice of probation detention hearing indicating the purpose of the hearing and referring to the probation violations alleged in the Notice of Violation/Hearing which is required to be served on the probationer under this standing order. The probation detention proceeding shall be commenced by the service of such notice on the probationer. The court may, for good cause, order that the probationer be taken into custody pending the completion of the proceeding. The notice of probation detention hearing shall be served in hand when the probationer is before the court having been arrested on a new delinquency or criminal complaint or youthful offender indictment, having been arrested for a probation violation, or for any other reason. The notice of probation detention hearing shall be prepared and served by the Probation Department at the discretion of a probation officer or as directed by the court.

**(c) Conduct of Hearing.**

Probation detention hearings shall be conducted by a judge or, if a judge is not available, by a clerk-magistrate. When a clerk-magistrate conducts a probation detention hearing, a resulting custody order shall not extend beyond the date on which a judge will next be available at the court. On such date, the probationer shall be brought before the court and any further custody order will require the conduct of a detention hearing by a judge.

Probation detention hearings shall be conducted in a courtroom on the record. The probationer shall be entitled to counsel. Following service of notice as provided in paragraph (b) above, the appointment of counsel, the appearance of private counsel or the knowing and voluntary waiver of the right to counsel in accordance with G. L c. 119, § 55A, the probationer shall be allowed a reasonable time to prepare for the hearing. At the hearing, the probation officer shall be required to present evidence to support a finding of probable cause. The District Attorney may assist in the presentation of such evidence. The probationer shall be entitled to be heard in opposition. Testimony, including the testimony of the probation officer, shall be taken under oath. The court shall admit such evidence as it deems relevant and appropriate. The scope of the inquiry shall be limited to the issue of whether there is probable cause to believe that the alleged violation of probation has occurred.

If probable cause is found, the court may order the probationer to be held in custody pending the conduct and completion of the violation hearing. The court's decision whether to order such custody, shall include, but not necessarily be limited to consideration of the following:

i. the probationer's criminal or juvenile record;

ii. the nature of the offense for which the probationer is on probation;

iii. the nature of the offense or offenses with which the probationer is newly charged, if any;

iv. the nature of any other pending alleged probation violations;

v. the likelihood of probationer's appearance at the probation violation hearing if not held in custody; and

vi. the likelihood of incarceration or commitment if a violation is found following the probation violation hearing.

If probable cause is found and the court does not order the probationer held in custody, the court may order the probationer released upon such terms it deems necessary and appropriate to insure the safety of an individual or the community. In the case of a juvenile, the court may impose terms of release that balance the issues of public safety and the best interests of the juvenile. These terms may include, but are not limited to, an earlier curfew, restrictions on the juvenile's activities, or terms that permit a juvenile to attend school and/or receive services available only in the community. Terms of release shall be set forth in writing and served in hand on the probationer. Terms of release imposed under this section are not conditions of probation. A violation of a term of release shall not itself be the basis for a finding of a violation of probation, although the judge may consider such violation of a term of release in determining a proper disposition under section VIII(d) and IX(b).

If no probable cause is found, the court may terminate the proceedings or schedule a probation violation hearing serving the probationer with notice thereof, but the probationer may not be held in custody nor shall an order with terms of release be issued pending the hearing based on the alleged probation violation.

**(d) Bail.**

Bail and other conditions of pretrial release pursuant to G. L. c. 276, §§ 58 and 58A do not apply to a probation detention hearing. However, the court shall proceed to determine the issues of bail and

pretrial detention ("dangerousness") on any new delinquency or criminal complaint or youthful offender indictment, as provided by law.

**Commentary**

This section differs from its antecedent, in its replacement throughout of the terms "preliminary probation hearing" and "final [or 'full'] probation hearing" with the terms "probation detention hearing" and "probation violation hearing," respectively. The purpose of these changes is to use terms that more accurately describe and clearly differentiate these proceedings.

Paragraph (b) contains a new sentence indicating that a probation detention proceeding is commenced when the notice thereof is served on the probationer. Another new sentence indicates that the court has the authority to hold the probationer in custody pending the completion of the proceedings for good cause.

Paragraph (b) contains a new, final sentence indicating that a probation detention hearing may be conducted at the direction of the court as well at the initiative of the Probation Department.

When probable cause is found and the court does not order the probationer held in custody, Section V authorizes the court to impose terms of release. Authorizing the court to impose terms of release is consistent with the Juvenile Court's mission to further the best interests of children who appear before the court by offering a course of rehabilitation rather than punishment, consistent with the provisions of G. L. c 119. See also Jake J. v. Commonwealth, 433 Mass. 70, 75 (2000). If a probationer fails to comply with the order of terms of release, the probationer may be subject to arrest and brought before the court for a review of custody status.

When the court does not find probable cause, the court must exercise its discretion whether to terminate proceedings or to schedule a probation violation hearing nonetheless. Because of the need for dispatch in conducting a detention hearing, the absence of evidence, witnesses, or assistance from the District Attorney may result in the probation officer's being unable to establish probable cause for the purpose of detention but still having a reasonable prospect of proving the probation violation at a full hearing. The court will decide whether further proceedings are in the interests of justice, but in no event may the probationer be held or subject to terms of release on the probation matter pending a probation violation hearing.

Paragraph (d) makes clear that bail and other terms of pretrial release have no application to a probationer's custody pending the conduct and completion of a violation hearing. Bail and other conditions of pretrial release, including pretrial detention based on "dangerousness" under G. L. c. 276, § 58 and 58A, relate solely to a newly alleged crime. If the court finds probable cause for a probation violation, it may order the defendant into custody pending the violation hearing. If the court does not find probable cause, the probationer cannot be held in custody on the alleged violation. Even if the probationer is held on the probation allegation, if he or she is also before the court on a new delinquency, youthful offender or criminal charge, the court must address the terms of pretrial release on the new charge(s). This issue is unrelated to custody on the probation charge. The prosecutor may want to be heard on the issue of bail or dangerousness because if the probation matter is promptly resolved, the defendant may be released from custody on the

probation matter well before the new delinquency, youthful offender or criminal case is concluded.

Conversely, the issue of probation custody should be addressed regardless of whether or not the prosecutor plans to ask for high bail or pretrial detention based on dangerousness on the new charge(s).

**VI. Conduct of hearings**

**(a) In General.**

Probation violation hearings shall be conducted by a judge, on the record. All testimony, including that of a probation officer, shall be taken under oath. The presentation of the case against the probationer shall be the responsibility of the probation officer assigned by the Chief Probation Officer of the court. The probationer shall be entitled to the assistance of counsel, including the appointment of counsel for probationers determined by the court to be indigent. A waiver by the probationer of the right to counsel shall be accepted by the court only if the court determines that such waiver is being made knowingly and voluntarily and in accordance with G. L. c. 119, § 55A.

**(b) Requirement of Two Step Procedure.**

Probation violation hearings shall proceed in two distinct steps, the first to adjudicate the factual issue of whether the alleged violation or violations occurred, the second to determine the disposition of the matter, if a violation of probation is found to have occurred.

**(c) Adjudication of Alleged Violation.**

Probation violation hearings shall commence with testimony by the probation officer describing the violation or violations alleged in the Notice of Violation/Hearing, and shall proceed with a presentation of the evidence supporting the allegations. The probationer shall be permitted to present evidence relevant to the issue of the alleged violation. Each party shall be permitted to cross-examine witnesses produced by the opposing party. Hearsay evidence shall be admitted by the court in accordance with section VII of this standing order, provided that the court shall enforce any statutory privileges unless waived and any legally required disqualifications. The probation officer shall have the burden of proving the alleged violations with or without the participation of the District Attorney as provided below. The standard of proof at such hearings shall be the preponderance of the evidence. After the presentation of evidence, both parties or their counsel shall be permitted to make a closing statement.

**(d) Dispositional Decision.**

If the court finds that the probationer has violated one or more conditions of probation as alleged, the probation officer shall recommend to the court a disposition consistent with the dispositional options set forth in sections VIII(d) and IX(b), and may present argument and evidence in support of that recommendation. The probationer shall be permitted to present argument and evidence relevant to disposition and to propose a disposition.

**(e) Continuances.**

Probation violation hearings shall be continued only by a judge and only for good cause shown. No continuance shall be ordered other than to a date certain and for a specific purpose, and as provided in section VIII(a). The pendency of a delinquency or criminal complaint or youthful offender indictment which also constitutes an alleged violation of probation shall not be grounds for a continuance of the probation violation hearing unless a judge determines the interests of justice require it. The reason of any continuance shall be stated by the judge and entered in the case docket.

**(f) Participation of the District Attorney.**

*(i) In General.* The District Attorney may participate in probation violation hearings as provided in G. L. c. 279, § 3, and such participation shall be permitted in any such proceeding regardless of whether the delinquency or criminal or youthful offender case in which the probation order was issued involved a felony charge.

*(ii) Coordination with the Probation Department.* If the District Attorney intends to appear at a probation violation hearing, he or she shall confer prior to the hearing with the probation officer responsible for presenting the matter to the court, for the purpose of coordinating the District Attorney's involvement in the hearing with the planned presentation of the probation officer.

*(iii) Presentation of Evidence*. The District Attorney may present and examine witnesses at the hearing and may examine witnesses presented by the probation officer, and may cross- examine witnesses presented by the probationer. The probationer may cross-examine witnesses presented by the District Attorney. The District Attorney shall be responsible for the attendance of every witness he or she wishes to present, and for the summoning of such witnesses.

*(iv) Finding and Disposition*. After the presentation of evidence, the District Attorney may be heard on the strength of that evidence in supporting a finding of violation. If the court finds that the probationer has violated one or more of the conditions of probation as alleged in the Notice of Violation/Hearing, the District Attorney may be heard regarding the court's disposition of the matter. The District Attorney may present a recommendation on disposition orally or in writing.

**(g) Admission to Violation and Waiver of Right to Hearing.**

The court may accept an admission to an alleged probation violation and a waiver of the right to a violation hearing only upon a determination that the admission and waiver have been made knowingly and voluntarily.

Such an admission and waiver shall not be accepted by the court subject to any condition regarding the disposition of such violation or the disposition of any other probation violation or any pending delinquency or criminal complaint or youthful offender indictment. A probationer shall not be entitled to withdraw an admission as of right after it has been accepted by the court.

**(h) Ensuring Probationer's Presence in Courtroom.**

For good cause, the court may order that the probationer be taken into custody pending the commencement and completion of the violation hearing.

**Commentary**

*District Attorney Participation*

Section (f) addresses participation by the District Attorney. Sections III and IV of this standing order require the probation officer to provide a copy of every Notice of Probation Violation and Hearing to the District Attorney. Section (f) is intended to clarify the involvement of the District Attorney in those cases where he or she decides to participate, consistent with the statutory provisions of G. L. c. 279, § 3.

It should be noted that as a constitutional matter, probation functions are within the judicial branch, and the office of the District Attorney is considered within the executive branch. Commonwealth v. Tate, 34 Mass.App.Ct. 446 (1993). Under the Massachusetts Constitution, Pt. 1 Art. 30, the branches must maintain a separation of governmental powers. That separateness does not, however, lead to the conclusion that a district attorney's office may not assist the probation service in presenting evidence in support of a position that the probation service had decided upon. Probation officers are only aided, not interfered with, when district attorneys, upon invitation, conduct examination of witnesses and present evidence. Commonwealth v. Tate at 448 and cases cited.

Thus the right of District Attorneys to present evidence and witnesses, and to examine and cross-examine witnesses at these proceedings would appear to be constitutionally acceptable as long as it does not fundamentally interfere with probation.

**VII. Hearsay evidence**

**(a) Admissibility of Hearsay Evidence.**

Hearsay evidence shall be admissible at probation violation hearings.

**(b) Legal Sufficiency of Hearsay Evidence.**

The court may rely on hearsay as evidence of a probation violation only if the court finds in writing that the hearsay is substantially reliable. In determining if hearsay is substantially reliable, the court may consider, among any other relevant factors, whether that evidence

(1) is based on personal knowledge and/or direct observation, rather than on other hearsay;

(2) involves observations recorded close in time to the events in question;

(3) is factually detailed, rather than generalized and conclusory;

(4) is internally consistent;

(5) is corroborated by any evidence provided by the probationer;

(6) was provided by a disinterested witness; or

(7) was provided under circumstances that support the veracity of the source (e.g., was provided under the pains and penalties of perjury or subject to criminal penalties for providing false information).

**VIII. Finding and disposition**

**(a) Requirement of Finding.**

Upon the completion of the presentation of evidence and closing arguments on the issue of whether the probationer has violated one or more conditions of a probation order, as alleged, the court shall make a determination of that issue. The court shall decide the matter promptly and shall not continue the proceeding generally.

**(b) Finding of No Violation.**

If the court determines that the probation officer has failed to prove by a preponderance of the evidence that the probationer committed a violation alleged in the Notice of Probation Violation/Hearing, the court shall expressly so find and said finding shall be entered in the case docket.

**(c) Finding of Violation; Written Findings of Fact.**

If the court determines that the Probation Department has proved by a preponderance of the evidence that the probationer has violated a condition of probation as alleged in the Notice of Probation Violation/Hearing, or if the probationer waives the hearing and admits such violation and the court accepts such admission in accordance with section VI(g), the court shall expressly so find, and said finding shall be entered in the case docket. In a contested proceeding, the court shall make written findings of fact to support the finding of violation, stating the evidence upon which the court relied. A finding of violation based on an admission may be recorded as such.

**(d) Disposition After Finding of Violation.**

After the court has entered a finding that a violation of probation has occurred, the court may order any of the following dispositions set forth below, as it deems appropriate. These dispositional alternatives shall be the exclusive options available to the court. The court shall proceed to determine disposition promptly following the entry of a finding of violation. General continuances are prohibited. In determining its disposition, the court shall give such weight as it may deem appropriate to the recommendation of the Probation Department, the probationer, and the District Attorney, if any, and to such factors as public safety; the seriousness of any offense of which the probationer was placed on probation; the nature of the probation violation; the occurrence of any previous violations and the impact of the underlying offense on any person or community, as well as any mitigating factors.

*(i) Continuance of Probation*. The court may decline to modify or revoke probation and, instead, issue to the probationer such admonition or instruction as it may deem appropriate.

*(ii) Termination*. The court terminate the probation order.

*(iii) Modification*. The court may modify the conditions of probation. Such modification may include the addition of reasonable conditions and the extension of the duration of the probation order.

*(iv) Revocation*. The court may order that the order of probation be revoked. If the court orders revocation, it shall state the reasons therefor in writing.

**(e) Execution of Suspended Sentence or Commitment; Stay of Execution.**

Upon revocation of a probation order, any sentence or commitment that was imposed for the offense involved, the execution of which was suspended, shall be ordered executed forthwith; provided, however, that such execution may be stayed (1) pending appeal in accordance with Mass.R.Crim.P. 31, or (2) at the court's discretion, and upon the probationer’s motion, to provide a brief period of time for

the probationer to attend to personal matters prior to commencement of a sentence of incarceration or commitment to the Department of Youth Services. The execution of such sentence or commitment shall not be otherwise stayed.

**(f) Imposition of Sentence or Commitment Where No Sentence or Commitment Previously Imposed.**

Upon revocation of probation in a case where no sentence or commitment was imposed following conviction or adjudication, the court shall impose a sentence, commitment, or other disposition as provided by law.

**IX. Violation of conditions of a continuance without a finding**

**(a) Notice, Conduct of Hearing, Adjudication.**

The procedures set forth in this standing order regarding notice for, and the conduct and adjudication of, probation violation hearings shall also apply where the Probation Department alleges a violation of one or more conditions of probation imposed together with a continuance without a finding.

**(b) Disposition.**

The dispositional options available to the court following a determination that one or more conditions of probation imposed together with a continuance without a finding have been violated shall be as follows:

*(i) Termination of Probation*. The court may terminate the order of probation and the continuance without a finding and enter a dismissal on the underlying criminal case.

*(ii) Continuation of the Continuance Without a Finding With No Probation Modification*. The court may continue the continuance without a finding and issue to the probationer such admonition or instruction as it may deem appropriate.

*(iii) Continuance of the Continuance Without a Finding With Modification of Probation*. The court may continue the continuance without a finding and modify the conditions of probation including the duration of the continuance.

*(iv) Termination of the Continuance Without a Finding and No Revocation of Probation*. The court may terminate the continuance without a finding without revoking probation and, if a finding of sufficient facts was entered at the time the continuance without a finding was ordered, shall proceed to enter a guilty, delinquency or youthful offender finding. The order of probation, with or without modifications, may thereupon constitute the disposition on the finding if the probationer consents.

*(v) Termination of the Continuance Without a Finding and Revocation of Probation*. The court may terminate the continuance without a finding and revoke the order of probation. If the court orders revocation, it shall state the evidence relied upon in writing, and, if a finding of sufficient facts was entered at the time the continuance without a finding was ordered, the court shall enter a guilty, delinquency or youthful offender finding and impose a sentence, commitment or other disposition as provided by law.

# Standing Order 1-18: Notification requirements and counsel appointment procedures for permanency hearings held pursuant to G.L. c. 119, § 29B and Trial Court Rule VI, Uniform Permanency Hearings

**1. Purpose**

The purpose of this Standing Order is to establish procedures for notification to parties and attorneys and for appointment of counsel for permanency hearings held pursuant to G.L. c. 119, § 29B and Trial Court Rule VI.

**2. Applicability**

This Standing Order is applicable to all Divisions of the Juvenile Court and to all matters where a permanency hearing is required pursuant to G.L. c. 119, § 29B.

**3. Scheduled hearing list**

**(a).** No less than ninety (90) days prior to the required scheduled hearing date in accordance with G.L. c. 119, § 29B and Rule 3 of Trial Court Rule VI, the clerk's office of the court wherein the hearing is to be convened shall send a list of cases scheduled for permanency hearings to the Department of Children and Families ('Department').

**(b).** The Department shall, within thirty (30) days of receipt of the list, advise the court in writing of the name of any child or young adult on the list who is no longer in the care or custody of the Department and therefore no longer requires a permanency hearing. In addition, the Department shall advise the court in writing whether the parents' rights to consent or receive notice of any petition for adoption, custody, guardianship or other disposition have been dispensed with pursuant to G.L. c. 119, § 26 or G.L. c. 210, § 3, whether the parents have signed voluntary surrenders under G.L. c. 119, § 23(a) or G.L. c. 210, § 2 or whether the young adult or the Department terminated the agreement to continue responsibility for the young adult under G.L c. 119, § 23(f).

**4. Notice**

No less than forty-five (45) days prior to the hearing date, the clerk's office shall send notice of the hearing to the Department, to the petitioner, if different from the Department, to the child or young adult's attorney, and unless the parents' rights to consent or receive notice of any petition for adoption, custody, guardianship or other disposition of the child have been dispensed with, or the parents have signed voluntary surrenders or the subject of the hearing is a young adult, to the parents, by mailing to their last known addresses, or if the parents are represented by counsel, to their attorney(s) of record. Such notice shall inform the parties of the date, time, and location of the hearing, of their right to counsel pursuant to G.L. c. 119, § 29, and of the right to file objections pursuant to Rule 6. If a case is scheduled for permanency hearing and the child or young adult is no longer in the care or custody of the Department, the Department shall notify the court and all parties, or if the parties are represented by counsel, the attorneys of record, and the court will take the case off the hearing list. The time for notice provided in this paragraph shall not apply if the court has determined that reasonable efforts to reunify the family are not required pursuant to G.L. c. 119, § 29C.

**5. Appointment of counsel**

**(a).** All parties have the right to counsel. If a party was represented by counsel at the trial, that counsel shall continue to represent the party until the court permits him/her to withdraw his/her appearance or until an appearance is filed by successor counsel. If trial counsel wishes to withdraw his/her appearance, and if the party has been determined to be indigent, a motion for withdrawal requesting appointment of successor counsel shall be filed. Any motion under this paragraph shall be scheduled for hearing no later than seven (7) days after filing. Counsel wishing to withdraw shall ensure that the motion to withdraw and appoint successor counsel is scheduled for hearing no less than thirty (30) days prior to the date of the scheduled permanency hearing. A permanency hearing shall not be taken off a court calendar to accommodate a motion to withdraw.

**(b).** If the attorney of record is no longer available to represent the child or young adult, the court shall remove the attorney and appoint successor counsel. The clerk's office shall send notice of the permanency hearing as set forth in section 4 of this Standing Order to the newly appointed counsel.

**(c).** If the attorney of record is no longer available to represent a parent and if the parent is indigent and their rights have not been dispensed with or the parent has not signed a voluntary surrender, the court shall remove the attorney and appoint successor counsel. The clerk's office shall send notice of the permanency hearing as set forth in section 4 of this Standing Order to the newly appointed counsel.

**6. Effective date**

This Standing Order is effective on March 1, 2018.

## Standing Order 2-18: Time standards

The Juvenile Court Department has jurisdiction over a variety of criminal and civil case types including delinquency and youthful offender proceedings, child requiring assistance proceedings (CRA) and care and protection/termination of parental rights proceedings. The vast majority of cases addressed by the Juvenile Court fall within the parameters of these four case types. The Juvenile Court has jurisdiction, by statute, of matters ancillary to these four case types including guardianship petitions, parentage complaints, change of name petitions and adoption petitions.

The work of the Juvenile Court often reflects shifting community expectations and social science theory regarding children. Those shifts in expectations often unpredictably alter Juvenile Court caseloads.

The purpose of the time standards is to provide guidelines for application in the great majority of cases; it being understood that, as a matter of discretion in specific situations, a judge may extend time periods and vary requirements in the interest of justice.

The time standards set forth below for the trial, settlement or other disposition of cases are applicable to cases filed in any division of the Juvenile Court Department on or after November 5, 2018. The benchmarks are not part of the time standards but are provided to offer guidance in achieving compliance with the standards.

**I. Delinquency and youthful offender proceedings (G.L. c. 119, §§ 52-74, MA Rules of Criminal Procedure)**

A. Filing of complaint or indictment to adjudication/disposition (bench trial): Six months (180 days).

Indictment of a juvenile as a Youthful Offender proceeds only at the option of the District Attorney for whom there are no time requirements for the exercise of that option.

B. Filing of complaint or indictment to adjudication/disposition (jury trial): Eight months (240 days).

Benchmarks

1. Arraignment: within fifteen (15) days from the issuance of the complaint, unless the juvenile has been referred to diversion.
2. Pre-trial Conference: within thirty (30) days from the arraignment.

The prosecuting attorney and defense counsel shall confer prior to the scheduled pretrial hearing in order to conference the case and to prepare a written pretrial conference report. In addition to those matters set forth in the Rules of Criminal Procedure, counsel shall also discuss whether the case can be disposed of by means of a plea and, if so, shall propose a date for a change of plea within the conference report. Special circumstances should be identified, including but not limited to: unavailability of victim or essential witness; information relating to the victim's capacity to testify at trial within the time frame established by the standards; existence of multiple defendants; anticipated delays occasioned by necessary forensic or scientific testing (e.g. DNA testing, drug analysis, etc.); delays due to issues related to the juvenile's competency, or the necessity for extended pretrial hearings such as those relating to the pretrial inspection of third party records or similar proceedings but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications.

**II. Child requiring assistance proceedings (G.L. c. 119, §§ 39E-I)**

A. Filing of application to preliminary hearing: Fifteen (15) days.

B. Acceptance of application to determination/disposition: Six (6) months.

Numerous reasons may delay the final disposition of cases, such as an outstanding warrant, the unavailability or inappropriateness of a home to which the child can return, and frequently, serious mental health issues which defy easy and quick resolution. In addition, the preliminary hearing may result in a referral to informal assistance which is not to exceed ninety (90) days and which may, with the agreement in writing of the parents and child, last an additional ninety (90) days for a total of one hundred and eighty (180) days.

**III. Care and protection/termination of parental rights proceedings (G.L. c. 119, §§ 24-29D, G.L. c. 210, § 3 and Juvenile Court Rules on Care and Protection Cases, Standing Order 1-10, Scheduling Care and Protection and Termination of Parental Rights Trials)**

A. Filing of petition to final order of adjudication and permanent disposition: Fifteen (15) months, which may be extended once for a period not to exceed 3 months.

Benchmarks

1. Temporary custody hearing: within seventy- two (72) hours of ex parte transfer of custody except by agreement of parties for good cause shown.
2. Filing of court investigator report: within sixty (60) days after the appointment of the investigator unless the court otherwise orders.
3. Status Hearing: within ninety (90) days after filing of the petition.
4. Pre-trial Conference: no later than thirty (30) days before trial.
5. Permanency hearings for children in Department of Children and Families' custody: twelve (12) months from the transfer of custody and annually thereafter.

B. Trial: Twelve (12) to fifteen (15) months after filing of the petition.

C. Decision and Written Findings: within ninety (90) days from the close of evidence. See Standing Order 1-10, requiring that an adjudication, termination of parental rights or decision not to terminate parental rights shall be made no later than thirty (30) days after the close of evidence.

D. Permanency Review: Following the entry of an order granting permanent custody of the child to the Department of Children and Families, the court shall hold a permanency review every six (6) months until legal permanency is achieved for the child. Legal permanency is achieved upon the closure of the case to reunification, adoption, guardianship or third party custody.

E. Legal Permanency: within 24 months after filing of the petition.

*Approved October 5, 2018, effective November 5, 2018*

## Standing Order 3-21: Child Requiring Assistance Proceedings

**I. SCOPE AND PURPOSE**

This standing order sets forth procedures in the Juvenile Court for child requiring assistance proceedings. The purpose of this standing order is to ensure a standard statewide process in the Juvenile Court for these cases that is in keeping with the mission of the Juvenile Court to assist children and strengthen families.

**II. DEFINITIONS, (See G.L. c. 119, § 21)**

"Child" is a person under the age of 18.

"Child requiring assistance" is a child between the ages of 6 and 18 who: (i) repeatedly runs away from the home of the child's parent, legal guardian or custodian; (ii) repeatedly fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child; (iii) repeatedly fails to obey the lawful and reasonable regulations of the child's school; (iv) is habitually truant; or (v) is a sexually exploited child.

"Custody" is the power to (1) determine a child's place of abode, medical care and education; (2) control visits to a child; and (3) consent to enlistments, marriages and other contracts otherwise requiring parental consent.

"Department" is the department of children and families.

"Fact Finding Hearing" is the hearing referred to in G.L. c. 119, § 39G that occurs following the court's acceptance of the application for assistance.

“Family requiring assistance” is a child, parent, guardian, custodian, sibling or any relative or caretaker responsible for a child requiring assistance.

“Habitually truant” is a school-aged child, not excused from attendance under the lawful and reasonable regulations of such child's school, who willfully fails to attend school for more than 8 school days in a quarter.

“Parent” is a mother or father, unless another relative has been designated as a parent as defined in G.L. c. 118, § 1 for the purposes of receiving benefits from the department of transitional assistance.

“Preliminary Hearing” is the hearing referred to in G.L. c. 119, § 39E that occurs within 15 days of the filing of the application for assistance.

“Sexually exploited child” is any person under the age of 18 who has been subjected to sexual exploitation because such person (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105; (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under section 4A of chapter 272 or (4) engages in common night walking or common streetwalking under section 53 of chapter 272.

**Commentary**

In order to determine whether a child has 'willfully' failed to attend school under the definition of 'habitually truant', the court must find purposeful conduct by the child and that the child's repeated failure to attend school “arises from reasons portending delinquent behavior.” See Millis Public Schools v. M.P., 478 Mass. 767, 775 (2018). The finding of willfulness is a “fact-based inquiry that will depend on the circumstances of each case.” Millis at 784. The willfulness requirement thus necessitates judicial inquiry into and assessment of the child’s reasons for not attending school. Truancy implies volitional conduct by the child for which the child is responsible. Each child’s purpose or reasons for missing school should be examined individually in order to determine whether the absences are willful beyond a reasonable doubt.

During the COVID-19 pandemic, many school districts moved to a model of remote learning or a hybrid model combining in-person classes with remote learning. This change in traditional in-person learning effects how the court determines whether a child is ‘habitually truant’. The Department of Elementary and Secondary Education promulgated regulations requiring school districts to develop attendance policies specific to remote or hybrid learning models. Absent caselaw or statutory changes addressing this specific issue, schools should provide a copy of its school attendance policy pursuant to 603 CMR 27.08 when filing for habitual truancy if the school is following a remote learning or hybrid model. The court may consider the child’s number of absences, the school’s virtual attendance policy, whether and how the school made such policy known to students and parents, the reasons that the child was absent, and what steps the school has taken to address the child’s chronic absences. While the court may look into the extent that the child was participating in classes as a part of the willfulness analysis, it is not for the court to determine the appropriateness of the attendance policy itself.

The Department of Elementary and Secondary Education requires every school committee to schedule a school year of at least 185 school days, with each school operating for 180 school days. See 603 CMR 27.03. Though the definition of 'habitually truant' refers to failing to attend 8 school days in a quarter, many school districts in the Commonwealth do not follow a quarterly schedule and instead divide the school year into semesters or trimesters. If the school district follows a semester schedule, the number of days to be considered habitually truant would be 16 days. If the school district follows a trimester schedule, then the number of days to be considered habitually truant would be 11 days.

**III. FILING OF THE APPLICATION FOR ASSISTANCE, (See G.L. c. 119, §§ 39E, 39H and 39L)**

**(a) Who May File**. A parent, legal guardian, or custodian of a child having custody of the child, may file an application for assistance alleging that the child (1) repeatedly runs away from home of said parent, guardian, or custodian or (2) repeatedly refuses to obey the lawful and reasonable commands of said parent, guardian or custodian resulting in their inability to adequately care for and protect the child.

A school district may file an application for assistance alleging that the child (1) is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, (2) has willfully failed to attend school for more than 8 school days in a quarter or (3) repeatedly fails to obey the lawful and reasonable regulations of the child's school. If the school district is alleging that the child is habitually truant, the school district's application shall state whether the school district has a truancy prevention program, whether the child and family have participated in the school's truancy prevention program, the specific steps taken to prevent the child's truancy if the child and family participated in the program, and the reasons for the child and family not participating in the program if one is available. If the school district is alleging that the child failed to obey the lawful and reasonable regulations of the school, the school district's application shall state the specific steps taken by the school to address the child's conduct.

A parent or police officer may file an application for assistance alleging that the child is a sexually exploited child.

**(b) Venue.** The application for assistance shall be filed in the Juvenile Court with jurisdiction over where the child resides for an application filed by a parent, legal guardian or custodian or police officer and over the school district responsible for monitoring the child's attendance for applications filed by a school district.

**(c) Clerk-Magistrate Referral.** Prior to accepting the application for assistance, the clerk-magistrate or his designee shall inform the petitioner that the petitioner may delay filing the request and choose to have the child and the child's family referred to a family resource center in the Juvenile Court division where the child resides and return to court at a later time to file an application for assistance.

**(d) Scheduling of the Preliminary Hearing.** The clerk shall schedule the preliminary hearing within 15 days of the filing of the application for assistance.

> **(1) Notification to Child.** If the child is not present at the time of the filing of the application for assistance, the clerk shall send a notice to the child regarding the preliminary hearing, together with a copy of the application.

**(i) Summons to Child and Parent(s).** The court may issue a summons requiring the child to appear at the preliminary hearing. The application for assistance shall be attached to the summons. If the child fails to appear in response to the summons, the court may issue a warrant. The warrant shall instruct the officer to whom it is directed to bring the child directly to the court. If the child is summonsed, the court shall also summons the child's parent(s) who reside in the Commonwealth.

**(2) Appointment of Counsel for the Child.** Counsel shall be appointed for the child at the time of the filing of the application for assistance. If the child is not present at the time of the filing of the application for assistance, the clerk shall notify counsel of the appointment in accordance with the procedures set forth in Supreme Judicial Court Rule 3:10, including the child's name, and the date of the preliminary hearing. Counsel shall be responsible for contacting the child prior to the preliminary hearing.

**(e) Probation Inquiry.** If the child is present at the time of the filing of the application for assistance, the clerk shall notify probation that an inquiry is necessary. The child shall meet with the chief probation officer or his designee for the purposes of conducting an inquiry.

**Commentary**

Subsection (a). General Law c. 119, § 39H does not address whether a non-custodial parent may file an application. When a non-custodial parent files an application the recommended practice is for the clerk to accept the application and refer it for a probation inquiry. The clerk's office should provide notification of the preliminary hearing to the parent with custody of the child. At the preliminary hearing, the judge may review the application, and within his/her discretion, determine whether the allegations meet the requirements of a child requiring assistance even though the applicant is a non-custodial parent.

The school district shall be required to file using an application specifically for school districts approved by the Chief Justice of the Juvenile Court. Pursuant to G.L. c. 76, § 20, supervisors of school attendance may file applications alleging that the child is truant on behalf of the school district.

Subsection (c). General Law c. 119, § 39E requires the clerk-magistrate to inform a petitioner that they may delay the filing of the application and be referred to a family resource center for assistance. The statute also requires the clerk-magistrate to disseminate to each petitioner educational materials about the family resource centers and the court process, including the types of orders the court may issue and the services available to the child and family through the court. In addition to materials that may be available in each local court, every clerk-magistrate shall provide the Handbook for Parents, Legal Guardians, and Custodians in Child Requiring Assistance Cases, published by the Administrative Office of the Juvenile Court, and a pamphlet about the Massachusetts 211 system which helps to connect youth and families with resources in their communities.

Subsection (d)(1). In addition to notifying the child, it is recommended that the court send notification to a non-custodial parent, whose parental rights have not been terminated, if information is provided to the court regarding the non-custodial parent.

Subsection (d)(1)(i). The warrant issued in a child requiring assistance case is known as a warrant of custodial protection. A warrant of custodial protection, unlike an arrest warrant, is not entered into

warrant management or any database run by the Department of Criminal Justice Information Systems (DCJIS). The recommended practice is for the court to fax a copy of the warrant to the police department in the municipality where the child lives, where the child attends school and any other police department in a municipality where the child may be located based on information provided by the petitioner. The statute requires that a summons issue prior to the issuance of a warrant, but there may be reasonable grounds in some circumstances to believe that the child will not appear in response to a summons and that any further delays would present an immediate danger to the physical and emotional well-being of the child. In these circumstances, the court may issue a warrant of custodial protection prior to the issuance of a summons.

The warrant of custodial protection may be issued for any type of child requiring assistance application. Therefore, if there is an open application alleging a child to be a child requiring assistance for any reason other than a runaway, the court may issue the warrant of custodial protection on the open case and does not need to create a new runaway application.

The warrant of custodial protection is valid until the child has been apprehended and brought to court. If the warrant is executed during court hours, the child shall be brought immediately before a judge. If the police take the child into custodial protection after court hours, the police shall follow the process provided for under G.L. c. 119, § 39H. The warrant of custodial protection shall be expunged once the child returns to court.

Subsection (e). The child is not always present at the time of the filing of the application. If the parent is present, probation will usually meet with the parent that day to conduct an initial inquiry to gather general information about the child and family. In some court locations, probation's inquiry with the child may occur on the day of the preliminary hearing or may be scheduled a few days prior to the preliminary hearing. Counsel for the child should be present at probation's inquiry of the child if counsel is available that day.

## IV. PRELIMINARY HEARING, (See G.L. c. 119, § 39E)

**(a) Purpose.** The purpose of the preliminary hearing is for the court to receive the recommendation of the probation officer and decide whether to (1) decline to accept the application because there is no probable cause to believe that the child and family are in need of assistance and dismiss the case, (2) decline to accept the application because the court finds that the child's interests would be best served by informal assistance and refer the child and family, with their consent, to a probation officer for assistance or (3) accept the application for assistance and schedule a fact-finding hearing.

**(b) Conduct of Hearing.** The preliminary hearing shall be conducted by a judge. The hearing shall be conducted on the record. The child's counsel and the child shall be present at the hearing. The petitioner shall be present and may be represented by counsel. At the hearing the probation officer shall present his recommendation to the court as to whether the best interest of the child require that assistance be given. The child and the petitioner shall have an opportunity to be heard in regard to the recommendation. The court may admit such evidence as it deems relevant and appropriate. The scope of the hearing shall be limited to the issue of whether there is probable cause to believe that the child and family are in need of assistance or whether the child's interest would be best served by informal assistance.

If the court determines that the best interests of the child would not be served by informal assistance and probable cause is found, the court shall accept the application for assistance and schedule a fact finding hearing.

If the court declines to accept the application for assistance because it finds that the interests of the child are best served through informal assistance, the court shall refer the child immediately to informal assistance. The probation officer shall meet with the child and family to schedule an informal assistance meeting.

If probable cause is not found, the court shall decline to accept the application for assistance and dismiss the case. The court shall also order that any records of the case maintained by the court, the clerk, and probation be expunged.

**Commentary**

Subsection (b). A child who is the subject of the application is entitled to counsel at all hearings, including the preliminary hearing. An indigent parent, legal guardian, or custodian is also entitled to appointment of counsel at any stage of the proceeding where custody is at issue. See G.L. c. 119, § 39F. All parties have the right to be heard. If the issues are not contested at the preliminary hearing and the parties agree to informal assistance or acceptance of the application, the information presented at the preliminary hearing, including that of the probation officer, need not be sworn testimony. If the issues are contested at the preliminary hearing and the court determines that evidence may be presented by the parties at the preliminary hearing, any testimony, including the testimony of the probation officer, shall be taken under oath.

Parties seeking the testimony of the probation officer beyond the probation officer's recommendation shall be required to follow the process set forth in Trial Court Rule IX, Uniform Rules on Subpoenas to Court Officials. The statute does not require the probation officer to provide a written recommendation, however, if the probation officer does submit a written recommendation, the recommendation shall be shared with the parties prior to the preliminary hearing.

Under G.L. c. 119, § 39E, a judge can order expungement at any point prior to the fact finding hearing occurring. Therefore, the judge may order expungement upon dismissal prior to holding the fact finding hearing even if dismissal occurs on the day of the hearing. A child requiring assistance case that has an expungement order shall be treated as 'non-existent' and may not be used in any court proceeding or released to anyone including the parties without the prior approval of the judge. Information in an expunged case that does not reveal the child and parents' identities may be released and compiled for reporting and statistical purposes. See G.L. c. 119, § 39E. Upon the issuance of an expungement order, the clerk-magistrate shall shred all papers in the case file and keep only a copy of the judge's expungement order. The clerk shall redact the name of the child from the expungement order, place the order in the case file and file the case with the court's closed cases. The probation department is required to expunge all records in its possession related to the child requiring assistance case. The court clinic shall

expunge documents filed with the court in the case. Other clinical records maintained by the court clinic regarding the case need not be destroyed but references to an expunged case shall not be included in any court clinic report filed with the court.

## V. TEMPORARY CUSTODY HEARING AND ORDER, (See G.L. c. 119, § 39H)

**(a) Issuing a Temporary Custody Order.** The court may issue an order placing the child in the temporary custody of the department when the child is alleged to be a child requiring assistance by reason of repeatedly refusing to obey the lawful and reasonable commands of such child's parents, legal guardian or custodian or if the court finds that the child is likely not to appear at the fact finding or disposition hearing. The court may hold an evidentiary hearing prior to issuing the temporary custody order. The scope of the hearing shall be limited to the issue of whether there is a preponderance of the evidence to believe that the child is in need of assistance for reason of repeatedly refusing to obey the lawful and reasonable commands of the child's parents, legal guardian or custodian or that the child is likely not to appear at the fact finding or disposition hearing.

**(b) Conduct of Temporary Custody Hearing.** The temporary custody hearing shall be conducted by a judge. The hearing shall be conducted on the record. The child's counsel and the child shall be present at the hearing. The parent shall be present and represented by counsel, unless the parent has waived their right to counsel. At the hearing the parent may present evidence to the court regarding the allegations surrounding the application for assistance and the need for a temporary custody order. The court may provide the child the opportunity to present evidence as to why the temporary order should not issue or the child may agree to the issuance of the order. All testimony shall be taken under oath.

**(c) Contrary to the Child's Best Interests and Reasonable Efforts Determination.** Prior to granting temporary custody to the department, the judge shall make a written certification and determination that it is contrary to the child's best interests to remain in the child's home and that the department has made reasonable efforts to prevent removal of the child from the child's home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of preventative services as an alternative to removal.

**(d) Duration of Temporary Custody Order.** An order granting temporary custody of the child to the department shall last for no more than 15 days. A temporary custody review hearing shall be held to determine whether the order shall continue for an additional 15 day period. The child and child's parents, all represented by counsel, shall attend the review hearing. If the judge determines by a preponderance of the evidence that the order shall be extended, it may be extended for an additional 15 day period. Following the first extension, the order shall only be extended for one more additional 15 day period following another temporary custody review hearing.

**Commentary**

Subsection (a). General Law c. 119, § 39H reads as follows: "If the court finds that a child stated to require assistance by reason of repeatedly refusing to obey the lawful and reasonable commands of such child's parents, legal guardian or custodian or is likely not to appear at the fact finding or disposition hearing, the court may order the child to be released upon such terms and conditions as it determined to be reasonable or…may place the child in the temporary custody of the department of children and families." The language as written is ambiguous as to when in a proceeding the court may

issue a temporary custody order and also whether such order may be issued for any application alleging the child to be a runaway, a truant or failing to obey school regulations. Based on the statutory language, the recommendation is that a temporary custody order may be issued at any time in a proceeding alleging the child to require assistance by reason of refusing to obey the lawful and reasonable commends of such child's parents, legal guardian or custodian. A temporary custody order may only be issued in a proceeding alleging the child to be a runaway, truant or failing to obey school regulations if the court finds by a preponderance of the evidence that the child will likely not appear for the fact finding or disposition hearing. The statutory language seems to contemplate that an issuance of a temporary custody order in those types of proceedings would occur only when a fact finding or disposition hearing is scheduled in the case.

Subsection (b). In 2008, the Supreme Judicial Court held that an indigent parent is entitled to court appointed counsel at the dispositional phase in a child in need of services case (the prior version of a child requiring assistance case) if the court was considering granting custody to the department. See In Re Hilary, 450 Mass. 491 (2008). In 2013, G.L. c. 119, § 39F was amended to provide the right to counsel for indigent parents at "any hearing or proceeding regarding custody of such child."

Subsection (c). The reasonable efforts determination shall be made on a form approved by the Chief Justice of the Juvenile Court. General Law c. 119, § 39H does not make reference to G.L. c. 119, 29C. Rather the statute states, that prior to the court granting temporary custody of the child to the Department, "the court shall make a written certification and determination that it is contrary to the best interests of the child for the child to be in the child's home or current placement and that the department of children and families has made reasonable efforts to prevent removal of the child from the child's home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of preventative services as an alternative to removal." When entering an order of temporary custody to the Department is only required to address the findings as outlined in § 39H and not those appearing in G.L. c. 119, § 29C as addressed in Care and Protection of Walt, 478 Mass. 212 (2017). The

court, however, shall schedule a permanency hearing for the child in accordance with Trial Court Rule VI, Uniform Rules for Permanency Hearings and G.L. c. 119, § 29B, to be held within 12 months. At every subsequent hearing in the proceeding, the parties shall be informed by the court of the permanency hearing date. See Trial Court Rule VI, Rule 3 (b).

Subsection (d). The temporary custody order may be extended beyond 45 days with the consent of the parent, child and counsel if the court finds that the extension is necessary due to exceptional circumstances where the child may be unavailable or where the continuation beyond 45 days is in the child's best interest.

## VI. INFORMAL ASSISTANCE, (See G.L. c. 119, § 39E)

**(a) Purpose.** The purpose of informal assistance is so the probation officer may refer the child and family to appropriate public or private resources for psychiatric, psychological, educational, occupational, medical, dental or social services. Informal assistance may also be used to help achieve an agreement with the child and the child's family to resolve the situation which formed the basis of the application for assistance.

**(b) Length of Informal Assistance.** Informal assistance shall not exceed 90 days from the date that the application for assistance was filed with the court. The period of informal assistance may be extended for an additional 90 day period with the written agreement of the child and the child's family. The entire length of informal assistance shall not exceed 180 days from the date of the filing of the application for assistance.

**(c) Expiration of Informal Assistance.** Upon expiration of the informal assistance period, the case shall be dismissed or scheduled for a fact finding hearing. If the case is dismissed, the court shall order that any records maintained by the court, the clerk and probation be expunged.

**(d) Acceptance of Application for Assistance**. During the informal assistance period, the child and child's family cannot be ordered to appear at any conferences, produce any papers or visit any places for referrals or services. If the child or child's family fail to participate in good faith in the referrals or conferences arranged by the probation officer, the probation officer shall certify the refusal in writing and the clerk shall accept the application for assistance and set a date for the fact finding hearing.

**Commentary**

Subsection (a). Informal assistance may occur in a number of different ways depending upon the needs of the child and family and the resources available to the probation department. Though the child and family are not required to provide information or participate in referrals or conferences with service providers, probation can conduct conferences with providers for the family's benefit. The attorney for the child should be involved in the informal assistance process absent an emergency or unless unavailability creates undue delay in the proceeding. No statements made by the child or by any other person during the inquiries, conferences or referrals may be used against the child at any subsequent hearing to determine that the child requires assistance, but such statements may be received by the court after the fact finding hearing for the purpose of disposition. See G.L. c. 119, § 39E.

Subsection (c). The dismissal of the case upon the expiration of informal assistance shall be done on the record by probation before the judge but does not require the presence of the parties in court. Probation shall record the dismissal on the Probation Officer Certification, JV- 089 form approved by the Chief Justice of the Juvenile Court. See Commentary, IV. Subsection (b) regarding expungement. When a fact finding hearing is scheduled upon the expiration of informal assistance, the court may allow the child and parent to be heard at the start of the fact finding hearing on whether the fact finding hearing may continue or the case return to informal assistance.

Subsection (d). If the child and parent fail to participate in good faith or attend conferences, probation shall so certify in writing on the Probation Officer Certification, JV-089, form and file the form in the clerk's office. Upon receipt of the form, the clerk shall accept the application and schedule for a fact finding hearing. Notice of the hearing shall be sent to the parties and all attorneys of record. The court may allow the child and parent to be heard at the start of the fact finding hearing on whether the fact finding hearing may continue or the case return to informal assistance.

## VII. FACT FINDING HEARING, (See G.L. c. 119, § 39G)

**(a) Purpose.** The purpose of the fact finding hearing is to determine whether the child and the child's family require assistance and, if so, determine the appropriate treatment and services for the

child and family, appropriate placement for the child, if necessary and the appropriate conditions and limitations of such placement.

**(b) Conduct of Hearing.** The fact finding hearing shall be conducted by a judge, on the record. The judge who conducted the preliminary hearing shall not conduct the fact finding hearing. All testimony shall be taken under oath. The presentation of the allegations in the application for assistance shall be presented to the court by the petitioner or the petitioner's counsel.

At the fact finding hearing the petitioner may testify describing the basis for the allegations in the application for assistance. The petitioner may be permitted to present evidence relevant to the issue of the allegations, including any relevant witnesses.

Child's counsel may cross-examine the petitioner and the petitioner's witnesses. Child's counsel may present evidence relevant to the issue of the allegations, including any relevant witnesses. The petitioner maybe permitted to cross-examine witnesses produced by child's counsel. In addition, the child may testify on his/her behalf. The petitioner may be allowed to cross-examine the child if the child testifies.

The probation officer shall not present evidence at the fact finding hearing regarding any statements made by the child or any other persons during the inquiry conducted prior to the preliminary hearing, or during the informal assistance period.

The standard of proof at the hearing is beyond a reasonable doubt. After the presentation of evidence, all parties or their counsel may be permitted to make a closing statement.

If the petitioner or petitioner's counsel is not present at the fact finding hearing, the fact finding hearing may be continued to another date in order for the petitioner to appear. If on the next scheduled date the petitioner fails to appear without good cause, the application shall be dismissed. If the application is dismissed without the fact finding hearing being held, the court shall order that any records of the proceeding maintained by the court, the clerk or probation shall be expunged.

**(c) Finding Child Requires Assistance**. If, the court finds that the statements in the application for assistance have been proven beyond a reasonable doubt after the conclusion of the fact finding hearing, the court may find that the child requires assistance. If the court finds that the child requires assistance, the court shall schedule a conference to determine the most appropriate disposition for the child and family.

> **(1) Motion to Dismiss Following Finding that Child Requires Assistance.** Any party, including the petitioner, may file a motion to dismiss the application at any time prior to the conference and disposition hearing. The judge may order the application be dismissed upon a showing that the dismissal is in the best interests of the child or if all parties agree to the dismissal.

**(d) Dismissal.** If after the conclusion of the fact finding hearing, the court finds that the statements in the application for assistance have not been proved beyond a reasonable doubt, the court shall find that the child does not require assistance and dismiss the application

**Commentary**

Subsection (b). The requirement that the judge who heard the preliminary hearing cannot conduct the fact finding hearing may be waived by the child and counsel.

If the issues are contested at the fact finding hearing, any testimony, including the testimony of the probation officer, shall be taken under oath. Parties seeking the testimony of the probation officer shall be required to follow the process set forth in Trial Court Rule IX, Uniform Rules on Subpoenas to Court Officials.

Though beyond a reasonable doubt is the burden of proof at the fact finding hearing, the statute does not require an evidentiary hearing. It is recommended as a best practice that the court conduct an evidentiary hearing and that such hearing allow for the admittance of hearsay evidence. Hearsay is not addressed in the statutes or caselaw but due to the flexible nature of these proceedings, it is recommended that reliable hearsay may be admitted. See Commonwealth v. Durling, 407 Mass. 408 (1990).

## VIII. CONFERENCE AND DISPOSITION HEARING, (See G.L. c. 119, § 39G)

**(a) Purpose.** The purpose of the conference and the disposition hearing is for the court to hear from and receive recommendations from the petitioner, the child's parent, the child, probation, and any service providers for the child in order for the court to determine an appropriate disposition for the child.

**(b) Scheduling and Notification of Conference.** Once the court determines that the child is in need of assistance, the conference and the disposition hearing shall be held as soon as possible.

The conference and the disposition hearing are two separate court events which may be scheduled for the same date at the court's discretion.

**(1) Sending Notice.** The probation officer shall provide the clerk's office with a list of persons who should receive notice of the conference. Parties to the case will automatically receive notice.

**(c) Recommendations.** The probation officer is required to present a written recommendation to the court on a form approved by the Commissioner of Probation. The recommendation shall advise the judge on the appropriate treatment and services for the child and family, the appropriate placement for the child and the appropriate conditions and limitations of such placement. Others invited to the conference may also present a written recommendation to the court.

In addition to written recommendations, the parties and those invited to the conference, may present an oral recommendation to the court regarding the most appropriate disposition for the child. If the child's attorney has not presented a written or oral recommendation to the court, the court shall inquire after hearing from probation and any others present at the conference, whether the child is in agreement or objects to any of the recommendations.

**(d) Disposition Hearing and Order.** After the conference has been held, the court shall hold a disposition hearing to review the recommendations presented at the conference. Once the court reviews the recommendations, the court shall make one of the following disposition orders:

(1) Subject to such conditions and limitations as the court may prescribe, including provisions for medical, psychological, psychiatric, educational, occupational, and social services and for supervision by the court clinic or any public or private organization providing counseling or guidance services

(i) Permit the child to remain with his parents, legal guardian or custodian; or

(ii) Place the child in the care of any of the following:

(a) a relative, probation officer, or other adult individual who, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child;

(b) a private charitable or childcare agency or other private organization, licensed or otherwise authorized by law to receive and provide care for such children; or

(c) a private organization which, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; or

(2) The court may place the child in the custody of the department subject to the provisions of G.L. c. 119, §§ 32, 33 and with such conditions and limitations as the court may recommend.

**(e) Duration of Disposition Order.** Any order of disposition may continue for not more than 120 days from the date of the issuance of the order. The order may be extended for 3 additional periods, each period not to exceed 90 days. The court shall hold a hearing prior to each extension to determine whether the extension is required because the purposes of the order have not been accomplished and the extension would be reasonably likely to further those purposes.

**Commentary**

Subsection (b)(1). This subsection is consistent with the guidance provided in Juvenile Court Transmittal 12-201, Child Requiring Assistance Cases

Subsection (d)(1). It is a recommended best practice for the disposition order to be in writing. Any written disposition orders shall be issued on a form approved by the Chief Justice of the Juvenile Court.

Subsection (d)(2). When the court orders the child into the custody of the department, the court is required to make the written certification regarding contrary to the best interests and reasonable efforts determination under G.L. c. 119, § 29C. The court may recommend that the department place the child out of the home and the Department is required to implement the court's recommendation as long as the court makes the certification and determination required under § 29C. The certification and determination shall be made on a form approved by the Chief Justice of the Juvenile Court.

Subsection (e). General Law c. 119, § 39G, sets forth a specific time for the duration of the disposition order. There are cases where the purposes of the order have not been accomplished within the 390 day timeframe. In those situations, the petitioner may file a new application for assistance in order to continue services to assist the child and family.

The purpose of the extension hearing is to determine whether the purpose of the disposition order have not been accomplished and that extension of the order would be reasonably likely to further those purposes. “Whether the purposes of the dispositional order have not been accomplished is not determined by the misconduct that gave rise to the ...petition, but by the needs of the child.” See In re Angela, 445 Mass. 55, 59 (2005). The extension hearing is not a hearing to readjudicate or review the child's conduct but rather to review whether the needs of the child are being met and whether the order requires an extension or modification to meet those needs. Id. at 61.

If the extension of the order may result in an out of home placement or in a commitment to the department, the child is entitled to an evidentiary hearing. Id. at 64. The petitioner bears the burden of proof which is a preponderance of the evidence. Id. at 65. However, it is within the judge's discretion to allow someone else other than the petitioner, such as a probation officer, to prosecute the extension of the dispositional order. Id. at 66.

## IX. APPEALS, (See G.L. c. 119, § 39I)

**(a) Claim of Appeal.** Pursuant to G.L. c. 119, § 39I, a child, parent, legal guardian or custodian may appeal from any order or determination, whether it is a final order or not, at any time in the proceeding. The case may proceed in the Juvenile Court and the judge issue any orders that meet the needs of the child while the appeal is pending. The appeal shall be to a single justice of the Appeals Court pursuant to G.L. c. 231, § 118 and shall follows the rules of regulation for practice before a single justice.

*Issued March 10, 2021, effective Date: April 1, 2021*