

Superior Court Standing Order 8-20

Third Updated Protocol Governing Superior Court Operations During the Coronavirus (COVID-19) Pandemic

Applicable to All Courts

Pursuant to the Supreme Judicial Court's order dated June 24, 2020, effective July 1, 2020 (SJC–July 1 Order), the Superior Court issues this standing order to update protocols governing court operations to accommodate increased court business during the Coronavirus (COVID-19) pandemic. This standing order is effective July 1, 2020, and rescinds and supersedes Standing Order 7-20, issued May 28, 2020. This standing order will remain in effect until further order of the court.

In the near term, the gradual reopening of Superior Court operations, in both civil and criminal matters, will proceed in three phases:

- I. from July 1 to July 12, 2020, the court will continue to handle emergency and non-emergency matters virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system where available), except where impracticable or inconsistent with the protection of constitutional rights, as under Standing Order 7-20 (see Part I below);
- II. from July 13 to August 9, 2020, more in-person proceedings will take place in courthouses, consisting of both emergency and non-emergency matters that can be handled more effectively or efficiently in person, as well as matters for which virtual proceedings are impracticable or inconsistent with the protection of constitutional rights (see Part II below);
- III. from August 10, 2020, until further order of the court, in-person proceedings may be expanded further, consisting of any additional matters that can be handled more effectively or efficiently in person, as well as matters for which virtual proceedings are impracticable or inconsistent with the protection of constitutional rights (see Part III below).

For any scheduled videoconference hearing involving a self-represented litigant with limited access to, or limited facility with, videoconference technology, the court will assist the litigant to enable participation by videoconference or will offer an alternative means of participating virtually.

I. **Phase I, effective from July 1 to July 12, 2020¹**

- A. General rule. Until July 12, 2020, courthouses will remain closed to the public, but the Superior Court will remain open to conduct emergency and non-emergency business in civil and criminal matters, and to adjudicate these matters. All business will be conducted virtually, except those matters specified in Part B hereof. Where court personnel are physically present in a courtroom for the purpose of conducting a virtual hearing, no one

¹ Phase 1 protocols are the same as those that governed Superior Court operations under Standing Order 7-20, from June 1 until June 30, 2020.

other than court personnel may be physically present in the courtroom without the approval of the judge conducting the hearing.

- B. Emergency in-person matters: The following matters shall be conducted in person, subject to Parts C through F hereof:
1. proceedings under G. L. c. 112, § 12S (“Mary Moe” petitions) unless, on request of counsel for the minor, a judge determines that, in the circumstances, it is necessary to conduct the proceeding by videoconference or telephone;
 2. wiretap warrants;
 3. any other matter which a judge, after consultation with the Clerk, the parties, Security, and Probation (if applicable), determines cannot be resolved virtually because it is not practicable or would be inconsistent with the protection of constitutional rights.
- C. Limits on who can appear in person. Only the following persons are permitted to appear in person, provided they are not prohibited from entering the courthouse by the Supreme Judicial Court’s Order Regarding Access to State Courthouses & Court Facilities, dated March 13, 2020, or any successor order of the SJC concerning access to courthouses:
1. attorneys
 2. parties
 3. witnesses
 4. other necessary persons as determined by the judge presiding over the proceeding
 5. no more than three members of the “news media,” as defined in Supreme Judicial Court Rule 1:19(2), although no such member may attend a Mary Moe hearing.
 6. As provided in SJC–July 1 Order, par. 4, in cases where a judge has ordered electronic monitoring in the form of either GPS or remote alcohol monitoring, or in cases where, pursuant to an earlier court order, previously installed electronic monitoring equipment requires maintenance or removal, all installations, maintenance, or removals of such equipment may occur in the courthouse to ensure security and access to personal protective equipment by probation personnel.
- D. The following essential court personnel for emergency in-person proceedings will be assigned:
1. a judge, assigned by the Regional Administrative Justice (RAJ)
 2. a Clerk or an assistant clerk, assigned by the Clerk
 3. a court officer, assigned by the Chief Court Officer or designee
 4. a probation officer or associate probation officer, if necessary.
- E. Anyone seeking to arrange an in-person hearing for a matter other than those specified in Parts B(1) or (2) hereof should file a written motion with the relevant Clerk’s Office, with notice to opposing counsel.
- F. If a judge determines that a proceeding must be conducted in person, and the courthouse where the Superior Court sits in the County in which the matter is pending is closed because of actual or suspected infection of courthouse personnel, the RAJ, in consultation with the Clerk and relevant RAJ of another county or region, or with the First Justice of another Trial Court department, may make arrangements to conduct the hearing in another courthouse.

G. Proceedings presumptively held virtually.

1. The court will address non-emergency civil and criminal matters virtually, to the extent feasible subject to (a) limited court staffing, (b) technological constraints, (c) the need to prioritize emergency or other matters, and (d) legal constraints, such as the moratorium on evictions and foreclosures signed into law by the Governor of the Commonwealth on April 20, 2020, see St. 2020, c. 65.
 - a. In civil cases, matters that will be conducted virtually, if feasible, will include:
 - i. processing and ruling on motions submitted under Superior Court Rule 9A
 - ii. Rule 16 conferences
 - iii. final pre-trial conferences
 - iv. status conferences
 - v. hearings on non-evidentiary motions.
 - b. In criminal cases, matters that will be conducted virtually, if feasible, will include:
 - i. conferences
 - ii. hearings on non-evidentiary motions
 - iii. arraignments if defendant waives physical presence or, if defendant does not so waive, then without prejudice to the defendant's right to an in-person hearing on bail to be held when feasible
 - iv. guilty pleas if defendant waives physical presence and the judge finds that defendant is able to and does make a knowing and voluntary waiver of rights including the right to physical presence.
 - c. All such conferences and hearings, both civil and criminal, will be conducted by videoconference or telephone, with arrangements made for virtual public access on request. Members of the public seeking such access shall so request by contacting the clerk.
2. Hearings on the following time-sensitive matters shall be held as promptly as possible, presumptively by videoconference or telephone, subject to additional provisions made herein, unless a judge, after consultation with the Clerk, the parties, Security, and Probation (if necessary), finds that the matter cannot be resolved through a videoconference or telephone hearing, because such a hearing is not practicable or would be inconsistent with the protection of constitutional rights. Any in-person hearing ordered under this Part I(G)(2) shall be limited to persons identified in Part I(C) above.
 - a. bail reviews
 - b. bail determinations following arrest or surrender pursuant to a Superior Court warrant
 - c. dangerousness hearings under G. L. c. 276, § 58A, provided that any order of detention under § 58A after a hearing by videoconference or telephone shall be without prejudice to the defendant's right to an in-person hearing to be held when feasible
 - d. probable cause hearings for sexual dangerousness under G. L. c. 123A, § 12, provided that any finding of probable cause made after a hearing by

- videoconference or telephone shall be without prejudice to the respondent's right to an in-person hearing to be held when feasible
- e. actions concerning compelled isolation or quarantine pursuant to Superior Court Administrative Directive 20–1 (Protocol Governing Actions to Enforce Isolation or Quarantine Orders)
 - f. requests for temporary restraining orders.
3. Promptly upon receipt of any motion seeking funds for expenses necessary to establish medical parole eligibility for a person serving a committed sentence, or to put in place a release plan for such a person or for a person held pending trial or pending a final hearing on a probation violation, the Clerk shall bring such motion to the attention of the RAJ, or of any judge designated by the RAJ. The RAJ or designated judge may allow any such motion on the papers, or may direct the prompt scheduling of a hearing by video or telephone. See *CPCS v. CJTC (No. 2)*, 484 Mass. 1029, 1032 (2020).
 4. Abuse Prevention Orders, and Harassment Prevention Orders. Proceedings pursuant to G.L. c. 209A (abuse prevention orders) and G.L. c. 258E (harassment prevention orders) shall be conducted virtually unless otherwise ordered by the court. Virtual hearings shall be conducted by videoconference, unless it is not practicable to conduct the hearing by videoconference, in which case the hearing may be conducted by telephone. An in-person hearing may be permitted by a judge if requested by one or more of the parties, or as ordered by a judge. In determining whether to permit an in-person hearing to occur, the judge should take into consideration all relevant factors, including but not limited to the positions of the parties, case scheduling constraints, building and courtroom occupancy limits, and social distancing accommodations.

II. Phase II, effective from July 13, 2020 to August 9, 2020

- A. The following matters, in addition to those listed in Part I(B) above, may be conducted in person. This list may be modified, as conditions warrant, and will be posted on the "Court System Response to COVID-19" webpage (COVID-19 webpage) (<https://www.mass.gov/guides/court-system-response-to-covid-19>), in accordance with SJC–July 1 Order, par. 3:
 1. Criminal:
 - a. arraignments
 - b. guilty pleas
 - c. bench trials
 - d. evidentiary hearings on motions
 - e. evidentiary hearings on contested probation violations.
 2. Civil:
 - a. bench trials
 - b. evidentiary hearings.
- B. Physical entry into a courthouse is limited to persons listed in Part I(C) above; personnel who work in the courthouse; persons conducting in-person business with a Clerk's Office (see Part IV, below); persons meeting with a probation officer or staff person; and persons conducting

business at other offices that are open to the public and housed in the courthouse. Measures to protect the health and safety of persons entering a courthouse and to prevent the spread of COVID-19 include the following:

1. all court users and personnel shall be subject to appropriate screening before they are allowed to enter a courthouse;
2. courthouse staff may monitor the number of people entering and leaving a courthouse to ensure the number does not exceed the occupancy limits established to protect public health and permit physical distancing;
3. as appropriate, the Superior Court will coordinate with other departments or offices within a courthouse to schedule proceedings in a staggered fashion, to limit the number of persons in the courthouse;
4. if courthouse occupancy limits require limiting the number of court users that can enter a courthouse at any given time, admission of court users shall be made in the following order of priority: (i) persons seeking to address emergencies; (ii) persons participating in a scheduled in-person proceeding, including, without limitation, a bench trial, hearing, conference, or grand jury sitting; (iii) persons with scheduled or otherwise required meetings between probationers and probation staff for purposes of supervision, including but not limited to GPS, DNA or case supervision matters; (iv) persons having a scheduled appointment within the courthouse; and, then, (v) all others.

C. Physical and virtual presence in a courtroom is permitted as follows:

1. in-person hearing
 - a. Court personnel, attorneys, parties, witnesses, and other necessary persons as determined by the presiding judge can be physically present.
 - b. The judge shall determine the method by which members of the public, including the "news media" as defined in Supreme Judicial Court Rule 1:19(2), may access the proceeding, which may include allowing them to be present in the courtroom, provided there is sufficient space for them to maintain appropriate physical distance.
 - c. On request, the judge may authorize a participant (an attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with the protection of constitutional rights; a participant who requests to appear virtually for an in-person proceeding shall have no ground to object to other participants appearing in person.
2. virtual hearing
 - a. Only court personnel may be physically present in the courtroom during a virtual hearing, unless the judge conducting the hearing approves otherwise.
 - b. A party or counsel for a party may be present only if the judge determines exceptional circumstances exist for such presence.

- D. Cell phones and other personal electronic devices (PEDs)² are permitted in the courthouse, but must be used in compliance with the rules set forth in Trial Court Emergency Administrative Order 20-10 (Order Concerning Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices), which was issued on June 24, 2020, and becomes effective on July 13, 2020. The administrative order will be posted on the COVID-19 webpage (<https://www.mass.gov/guides/court-system-response-to-covid-19>) and at the entrance to each courthouse.

III. Phase III, effective August 10, 2020, until further order of the court

- A. In addition to matters listed in Part I(B) and Part II(A) above, any additional matters identified by the court on the COVID-19 webpage (<https://www.mass.gov/guides/court-system-response-to-covid-19>), in accordance with SJC–July 1 Order, par. 3, may be conducted in person.
- B. The rules governing entry into a courthouse, presence in a courtroom, and the use of cell phones and PEDs outlined in Part II(B) through (D) above will continue to apply to Phase III.

IV. Clerks’ Offices

- A. From July 1 through July 12, 2020, all Superior Court Clerks’ Offices will continue to conduct court business as follows:
 - 1. accept emergency filings by email, docket them as promptly as possible consistent with limited staffing, and bring them to the attention of the RAJ or a judge designated by the RAJ;
 - 2. in those counties that have efilings, process filings received by efilings as promptly as possible consistent with limited staffing;
 - 3. accept all filings received by mail and docket them as promptly as possible consistent with limited staffing;
 - 4. schedule and facilitate hearings; issue orders; answer questions from attorneys, litigants, and the general public; and conduct other necessary business of the court.
- B. Beginning on July 13, 2020, Clerks’ Offices will physically reopen to the public to conduct court business but, to the extent possible, will continue to conduct business virtually to maintain limits on the numbers of persons entering courthouses. A Clerk’s Office may provide a drop-box in a secure and accessible location at the courthouse for the benefit of those persons who choose to hand-deliver pleadings or other documents for filing.
- C. Each Clerk has established and published on the COVID-19 webpage (<https://www.mass.gov/guides/court-system-response-to-covid-19>) a policy regarding how documents may be submitted to that Clerk’s Office.

² A personal electronic device is any device capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to a computer, tablet, cell phone, camera, or Bluetooth device.

- D. Each Clerk is authorized to require the physical presence of additional staff as may be necessary to handle court business as provided herein, provided that any such increase in staff presence will be conducted in accordance with health and safety protocols established by the Trial Court.
- E. Clerks' office personnel shall follow the policies and guidance provided by the Department of Human Resources in the Trial Court Office of Court Management. If illness or exposure to the virus of personnel in any Clerk's office affects availability of personnel to the extent that a Clerk's office lacks sufficient personnel to continue operations, including remote operations, the Clerk and AOSC will consult with other clerks to arrange assistance for the affected office.

V. Trials, hearings, and other court activities

- A. Jury and bench trials continued. As provided in SJC–July 1 Order, par. 9:
 - 1. all jury trials, in both criminal and civil cases, scheduled to commence at any time from March 14, 2020, through September 4, 2020, are hereby continued to a date no earlier than September 8, 2020;
 - 2. all bench trials in civil and criminal cases scheduled to commence or resume at any time from March 14, 2020, through June 30, 2020, are continued to a date no earlier than July 13, 2020, unless:
 - a. in a civil case, in the judge's discretion, it is determined the trial may be held virtually;
 - b. in a criminal case, by agreement of the parties and the judge, it is determined the trial may be conducted virtually. Concerning criminal bench trials, priority should be given to scheduling such trials where the defendant is in custody, with the highest priority given to those defendants who have been in custody the longest.
 - c. There will be no further general continuance of bench trials beyond July 13, unless there is a new surge in COVID-19 cases in the Commonwealth and the SJC determines that a further general continuance is needed.
 - 3. Pursuant to SJC–July 1 Order, par. 11, time periods of continuances occasioned by any of the SJC's Orders, effective March 13 or 17, April 6, May 4, or June 1 (prior SJC Orders) shall be excluded from speedy trial computations under Mass. R. Crim. P. 36.
- B. Applying for conference concerning postponement of trial or evidentiary hearing. As provided in SJC–July 1 Order, par. 10, a party who has had a trial or evidentiary hearing postponed as a result of the SJC–July 1 Order, or a prior SJC Order, may, by motion, apply for a conference with the court to address matters arising from the postponement. The conference shall occur by videoconference or telephone.
- C. Bail or conditions of release. As provided in SJC–July 1 Order, par. 10, in criminal cases, where appropriate, a defendant may seek reconsideration of bail or conditions of release. Hearings on such requests may be conducted by videoconference or telephone where feasible. Persons in custody shall not be transported for such hearings.

- D. Grand juries. As provided in SJC–July 1 Order, par. 12, no new grand jury shall be empaneled before September 8, 2020, unless ordered by the SJC. Grand juries whose terms expire before the empanelment of a new grand jury shall be extended until the date of that new empanelment or the date of the October 2020 empanelment in the relevant judicial district, whichever occurs first. No sitting grand jury shall be convened and, after September 8, no new grand jury shall be empanelled without the approval of the RAJ who, after consultation with the Chief Justice of the Superior Court, shall set such conditions as may be necessary to minimize risk to members of the grand jury, court personnel, and witnesses. The RAJ or the Chief Justice of the Superior Court may consult with the Jury Commissioner regarding such conditions.
- E. Statutes of limitation. As provided in SJC–July 1 Order, par. 13, and pursuant to prior SJC Orders, statutes of limitations for civil cases were tolled from March 17, 2020, through June 30, 2020. The tolling period shall end on June 30, 2020, and not be further extended unless there is a new surge in COVID-19 cases in the Commonwealth and the SJC determines that a new or extended period of tolling is needed. All criminal statutes of limitation are tolled from March 17, 2020, through September 30, 2020, because of the limited availability of grand juries.

If the statute of limitations in a given civil or criminal case had not expired as of March 17, 2020, then to calculate when the limitations period expires, count the number of days from, and including, March 17 to the original statutory deadline. For a civil case, take that number and add it to July 1 for the new deadline; for a criminal case, take that number and add it to September 30 for the new deadline.

- F. Tolling of deadlines set by statute, court rule, standing order, or guideline. As provided in SJC–July 1 Order, par. 14, unless otherwise ordered by a judge presiding over a case, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired at any time from March 17, 2020, through June 30, 2020, were tolled by prior SJC Orders from March 17, 2020, through June 30, 2020, and will not be tolled any further unless there is a new surge in COVID-19 cases in the Commonwealth and the SJC determines that a new or extended period of tolling is needed. This paragraph does not affect the continuance of trials, which are governed by Part A hereof.

If such a deadline had not expired as of March 17, 2020, then to calculate the new deadline, count the number of days from, and including, March 17 to the original deadline and take that number and add it to July 1 for the new deadline.³ If a deadline tolled pursuant to this paragraph is one of a series of deadlines under a tracking order, all of the subsequent deadlines are extended by the same number of days as the deadline tolled pursuant to this paragraph, unless otherwise ordered by the court.

³ The tolling of deadlines under Part V(F) applies to motions filed under Mass. R. Crim. P. 29, see *CPCS v. CJTC (No. 2)*, 484 Mass. 1029, 1030 n.3 (2020), but not to deadlines set in Superior Court Standing Order 5-20, effective April 6, 2020, regarding motions arising from the SJC’s decision in *CPCS v. CJTC (No. 1)*, 484 Mass. 431 (2020).

G. Tolling of court-ordered deadlines in particular cases. As provided in SJC–July 1 Order, par. 15, unless otherwise specifically ordered by the judge presiding over a particular case, all deadlines established by a court in a particular case prior to March 17, 2020, that expired at any time from March 17, 2020, through June 30, 2020, were tolled by prior SJC Orders until July 1, 2020. No further tolling is anticipated unless there is a new surge in COVID-19 cases in the Commonwealth and the SJC determines that a new or extended period of tolling is needed. This paragraph does not affect the continuance of trials, which are governed by Part A hereof. This Order does not toll any deadline established by a judge in a particular case that was issued on or after March 17, 2020. Probation termination dates are not tolled by this provision.

If such a deadline had not expired as of March 17, 2020, then to calculate the new deadline, count the number of days from, and including, March 17 to the original deadline and take that number and add it to July 1 for the new deadline.

- H. Expiring injunctions and similar orders. As provided in SJC–July 1 Order, par. 16, unless otherwise ordered by the court, all orders in a particular case that were issued before March 17, 2020, after an adversarial hearing (or the opportunity for an adversarial hearing), that enjoined or otherwise restrained or prohibited a party from taking some act or engaging in some conduct until a date at any time from March 17, 2020, through August 31, 2020, shall remain in effect until the matter is rescheduled and heard. Such matters will be rescheduled and heard virtually, whenever practicable, or in person, pursuant to Parts II and III above. Orders issued on or after March 17, 2020, after a virtual or in-person adversarial hearing (or the opportunity for an adversarial hearing), may issue for the full period allowed by the applicable statute.
- I. Video and telephone equipment. Each RAJ shall advise Deputy Court Administrator (DCA) Elaina Quinn regarding any deficiency in equipment necessary to conduct proceedings by video or telephone. DCA Quinn shall work with the appropriate personnel in the Office of Court Management to address any such deficiency as promptly as possible.
- J. Administrative Office of the Superior Court (AOSC). The AOSC shall remain open with skeleton staff and through remote operations. AOSC staff shall follow the policies and guidance provided by the Department of Human Resources in the Office of Court Management. The AOSC will remain open for accepting returns of wiretap warrants.

So Ordered,

/S/ Judith Fabricant

Judith Fabricant
Chief Justice of the Superior Court

Adopted: June 25, 2020
Effective: July 1, 2020

Addendum to Superior Court Standing Order 8-20

Barnstable County Superior Court	(508) 375-6684	
Berkshire County Superior Court	(413) 442-9190	
Bristol County Superior Court	(508) 491-3300 (508) 996-2051 (508) 823-6588	Fall River New Bedford Taunton
Dukes County Superior Court	(508) 627-4668	
Essex County Superior Court	(978) 825-4800 (978) 242-1900 (978) 462-4474	Salem Lawrence Newburyport
Franklin County Superior Court	(413) 775-7400	
Hampden County Superior Court	(413) 735-6016	
Hampshire County Superior Court	(413) 584-5810	
Middlesex County Superior Court	(781) 939-2700 (978) 656-7800	Woburn Lowell
Nantucket County Superior Court	(508) 228-2559	
Norfolk County Superior Court	(781) 326-1600	
Plymouth County Superior Court	(508) 747-8400 (508) 583-8250	Plymouth Brockton
Suffolk Civil Superior Court	(617) 788-8175	
Suffolk Criminal Superior Court	(617) 788-8160	
Worcester County Superior Court	(508) 831-2000	