

Massachusetts Juvenile Court Rules for the Care and Protection of Children

Including Standing Orders through January 2018.



COMMONWEALTH OF MASSACHUSETTS JUVENILE COURT DEPARTMENT RULES AND STANDING ORDERS

Massachusetts Juvenile Court Rules for the Care and Protection of Children

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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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Standing Orders

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, paternity, 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](#).

Reporter's Notes

The 2007 amendments to Rule 1 make the Massachusetts Rules of Civil Procedure applicable to proceedings in the Juvenile Court where equitable relief is sought. For example, a civil action brought in the Juvenile Court seeking specific performance of a post-adoption contract ([G. L. c. 210, § 6D](#)) will be governed by the Massachusetts Rules of Civil Procedure.

Rule 2. Appointment of Counsel

Counsel shall be appointed in accordance with the provisions of [s. 29 of c. 119](#) and [c. 211D](#) of the General Laws, and Rule 3:10 of the Rules of the Supreme Judicial Court in care and protection proceedings pursuant to [s. 24 of c.119](#) or [s. 3 of c. 210](#).

Rule 3. Process

A. Summons to Parent/Guardian; Service of Process by Publication.

1. Care and Protection Cases, [G.L. c. 119, s. 24](#) et. seq.

Following the commencement of the case, 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 subject child. The summons or order of notice shall be on a form issued or approved by the court and shall be served on each of the parents of the subject child 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.
- (b) Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing if the parent if any, is present.
- (c) If the Department of Social Services is not the petitioner, the petitioner shall provide notice to the department of the filing of the petition by first class mail, postage prepaid.

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain said place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without 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.

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

(f) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.

(g) Whenever service by publication is required in a care and protection case:

(i) The court shall, upon motion of the petitioner, other party, or *sua sponte*, issue an Order for Service by Publication, and 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 otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit as to the parent to be served by Publication.

(ii) If, after the petitioner has perfected service of process by publication in accordance with this rule, no parent has appeared or can be found, a summons shall be issued to the child's legal guardian, if any, known to reside within the Commonwealth, and, if none, to the person with whom such child last resided, if known.

2. Guardianship of a Minor Cases, G.L. c. 201, s. 2 et seq.

Except as provided for in subsection (i), following the filing of a guardianship 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 subject child, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the court and shall be served with a copy of the petition 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 minor is above the age of fourteen years and has not nominated the guardian proposed in the petition in conformance with the requirements of G.L. c. 201, s. 2, then service shall be made in the same manner on the minor.

(b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition by the first class mail, postage prepaid

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without 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 seven days before the petition for guardianship is heard, unless the court otherwise orders, and

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

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

(f) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.

(g) Whenever service by publication is required in a guardianship case:

(i) The court shall, upon motion of the petitioner, other party, or *sua sponte*, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time 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 otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit 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 in accordance with subsection (d)(i) of this rule.

(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, s. 2, or (3) if the court has terminated parental rights pursuant to G.L. c. 210, s. 3.

(j) 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 which the petitioner shall promptly file with the court.

(k) A motion for temporary guardianship may not be filed unless a permanent guardianship petition has been filed. A motion for the appointment of a temporary guardian shall be made in writing and shall be accompanied by an affidavit that sets forth the nature of the emergency requiring appointment of a temporary guardian and the particular harm sought to be avoided. If service of the summons or order of notice has not been made in accordance with Rule 3, a copy of a motion for temporary guardianship and written notice of its hearing shall be served with the summons or order of notice unless the court orders otherwise.

3. Paternity and Child Support Cases, [G.L. c. 209C, s. 3\(c\)](#); [c. 119, s. 28](#); c. 201, s. 40

Following the filing of a complaint for paternity and/or for an order of child support, the plaintiff shall cause a summons or order of 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 subject child unless a parent has assented to the filing of the complaint, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the 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 minor is above the age of fourteen years, service shall be made in the same manner on the minor.
- (b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.
- (c) If the Department of Social Services is not the legal custodian of the child, the plaintiff shall provide notice to the department of the filing of the complaint by first class mail, postage prepaid.
- (d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the plaintiff setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without 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 seven days before the complaint is heard, unless the court otherwise orders, and
 - (ii) publication in accordance with subsection (f), below.
- (e) If the place of residence or whereabouts of a parent is known but the plaintiff has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the plaintiff, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.
- (f) Whenever service by publication is required in a paternity or child support case:
 - (i) The court shall, upon motion of the plaintiff, other party, or *sua sponte*, issue an Order for Service by Publication, and the plaintiff shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the

publication to appear at least seven days before the complaint is heard, unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the plaintiff to file a Military Affidavit as to the person to be served by Publication.

4. Change of Name Cases, G.L. c. 201, s. 12 et seq.

Order of Notice. Except as provided for in subsection (f), following the filing of a change of name petition, the petitioner shall serve notice on each of the parents of the subject child, and upon the Department of Social Services if it is the child's legal custodian in accordance with an order of notice. An order of notice shall be on a form issued or approved by the court and shall be served with a copy of the petition in the following manner:

(a) Service shall be accomplished on the parent by 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 change of name is heard, unless the court otherwise orders.

(b) Service may be accomplished by a court officer when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition by first class mail, postage prepaid.

(d) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by certified 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 a written motion of the petitioner setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by publication in accordance with subsection (e), below.

(e) Whenever service by publication is required in a change of name case:

(i) The court shall, upon motion of the petitioner, or *sua sponte*, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for change of name is heard, unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit as to the parent to be served by Publication.

(f) 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, s. 2, or (3) if the court has terminated parental rights pursuant to G.L. c. 210, s. 3.

(g) 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 which the petitioner shall promptly file with the court.

B. Filing Proof of Publication. Following publication in accordance with the order, counsel for the petitioner or plaintiff, as the case may be, shall promptly complete and file in the Clerk- Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the 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, as the case may be, 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 which the petitioner or plaintiff, as the case may be, shall promptly file with the court.

Rule 4. Filing of Birth Certificates

A. Care and Protection and Guardianship Cases. The petitioner or plaintiff, as the case may be, 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 or complaint, of each child named in the petition or complaint unless waived by the judge for good cause shown. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to [c. 46, s. 2A](#) of the General Laws if said petitioner or plaintiff does not have custody of the child.

B. Paternity and Change of Name Cases. The petitioner or plaintiff, as the case may be, shall file along with the petition or complaint, a certified copy of the birth certificate for each child named in the petition or complaint unless waived by the judge for good cause shown. The birth certificate shall have been issued within thirty days of filing with the court. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to [c. 46, s. 2A](#) of the General Laws if said petitioner or plaintiff does not have custody of the child.

Rule 5. Service and Form of Papers

A. Every motion or other paper filed in court shall be promptly served by the attorney or party filing it by mailing or delivering a copy to each attorney of record, and each party appearing pro se.

B. Unless a motion 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 therefore, 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 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. 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 which may be heard ex parte, and notice of the hearing of the motion, shall be served pursuant to paragraph A of this rule, no later than seven days prior to the hearing.. When service is made by mail, three days shall be added to the seven days' notice requirement. An application for ex parte relief from the seven day notice requirement shall be by motion and supported by affidavit setting forth the nature of the emergency.

D. Every motion or other paper filed with the court, other than documents offered in evidence, shall be on 8 ½" x 11" white paper 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 paper, and shall set forth the name, address, telephone number of the attorney or pro se party filing it, and the Board of Bar Overseers registration number of the attorney; and the date on which the motion or other paper was filed with the court.

Rule 6. Appearances

All counsel shall file a notice of appearance by hand delivering or mailing a notice of appearance which shall include the name of the attorney, address, telephone number and Board of Bar Overseers number. A copy of the appearance shall be served on all parties. Court appointed counsel, upon acceptance of the appointment, must file a separate paper entitled Notice of Appearance. A Notice of Assignment of Counsel does not satisfy the requirements of this rule.

Rule 7. Investigator's Report in Care and Protection Cases

In a care and protection action, including actions in which the need for parental consent to adoption is in issue, the report of the court-appointed investigator 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 for the filing of the court investigator's report shall be in writing, signed by the court investigator and approved by a justice of the juvenile court. The court investigator shall file a request for extension of time no later than fourteen days prior to the date the report is due, provided however, that the court may permit the filing of a request for an extension at some other time in the interests of justice. If the court approves a request for an extension, the court investigator shall provide a copy of any such approved request to all counsel of record and to any party who is not represented by counsel.

Rule 8. 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 Department. Nothing in this rule shall preclude changing the assignment of a case to, or matters being heard by, a different judge in the interests of justice.

Rule 9. Discovery

A. Department of Social Services or Licensed Placement Agency. In any care and protection case in which the Department of Social Services or a licensed placement agency is or becomes a party, the Department of Social Services or the licensed placement agency shall produce for each other party a copy of its entire social services file, including reports made pursuant to [G.L. c. 119, s. 51A](#) and [s. 51B](#), within thirty days from the date the case is commenced, or within thirty days from the date the Department of Social Services 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.

When producing a copy of its social services file in compliance with this rule, the Department of Social Services or licensed placement agency may withhold therefrom privileged material and work product of its attorney, and may withhold therefrom 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, s. 51A](#), subject to orders for further production.

The attorney for the Department of Social Services or licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department of Social Services 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 leave of court on such terms as the court prescribes. Leave of court shall be requested by motion in accordance with [Rule 5](#).

Rule 10. Motion/Status Conference

A. There shall be a motion/status conference within ninety days after the commencement of any proceeding governed by these rules. All pending discovery motions, if any, shall be heard at the conference. The conference shall result in a status order addressing, at the least, service of process in accordance with [Rule 3](#); a discovery order and schedule (if further discovery is to be had); any special evidentiary issues requiring pretrial hearing and the scheduling thereof; any special issues regarding services being offered or

delivered to the family pending trial requiring pretrial hearing and the scheduling thereof; the scheduling of the pretrial conference.

B. Nothing in this rule shall preclude the court from hearing the motions at other times in the interests of justice.

C. Counsel for the parties shall file written certification that mediation has been discussed pursuant to [Rule 5 of Rule 1:18](#) of the Supreme Judicial Court.

Rule 11. Pretrial Conference in Care and Protection Cases

A. Pretrial Conference. A pretrial conference shall be scheduled at the time of the first appearance to occur no later than one hundred twenty days after the filing of the petition, 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.

B. Pretrial Memorandum. The parties shall file with the court at the pretrial conference a joint pretrial memorandum, provided however, the Chief Justice of the Juvenile Court Department may waive the requirement of joint pretrial memoranda for a particular division upon the written request of the First Justice. In the event the Chief Justice waives the requirement that joint pretrial memoranda be filed in a particular division, each attorney shall file an individual pretrial memorandum. All pretrial memoranda, whether joint or individual, shall be signed by each counsel of record certifying that all counsel have met and discussed all of the matters set forth below which must be included in the memorandum:

1. Name, address and telephone number of trial counsel
2. Names and date and place of birth of each parent
3. Names and date and place of birth of each child named in the petition
4. Whether parents have been served [petitioner] *and the date of service*
5. Certification that discovery has been completed; and if discovery has not been completed, a list of discovery items not yet completed and the compliance date
6. 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
7. An identification of the specific contested issues to be litigated at trial [Not a restatement of statutory language]
8. A stipulation of all uncontested facts and issues
9. A numerical list of proposed exhibits (no objections) to be introduced at trial
10. An alphabetical list of pre-marked exhibits that may raise objections and detailed grounds for objections including document, page number, paragraph, and sentence

11. A list of proposed witnesses with expert witnesses clearly designated, a delineation of the issues to which the expert is expected to testify, and a copy of his or her curriculum vitae

12. An estimate of trial time

13. A procedural history of the case

14. A statement addressing such matters as may aid in the disposition of the action

The pretrial memorandum or memoranda shall also include, where applicable:

15. Whether a writ of habeas corpus is needed

16. Whether an interpreter is needed for trial

17. A statement acknowledging that the possibility of settlement has been discussed

18. A statement regarding consolidation or interdepartmental assignment including whether it has been requested

19. A statement that counsel for the parties have discussed mediation with their client(s) pursuant to [Rule 5 of Rule 1:18](#) of the Supreme Judicial Court

20. A statement by the petitioner as to whether the Indian Child Welfare Act may apply to the proceeding

Parties shall be bound by the witness and exhibit lists set forth in the pretrial memoranda, except by leave of court for good cause shown.

Failure of counsel to appear at any scheduled pretrial conference or to meet and participate in the drafting of the pretrial memorandum or to otherwise fail to comply with the provisions of the court's order, if any, may result in the imposition of sanctions. The court may award costs against any party or attorney whose unjustified absence or lack of preparation prevented the conduct of a pretrial conference.

C. Scheduling the Hearing on the Merits. At the pretrial conference, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition.

Rule 12. Sanctions; 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. 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 13. Subpoenas

Subpoenas shall be served and enforced as provided by [Mass. R. Civ. P. 45](#) and may be issued by the office of the Clerk-Magistrate or as provided in Mass. R. Civ. P. 45.

Rule 14. Trial Judge's Order, Findings of Fact and Conclusions of Law: 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 the trial judge's making an adjudication, 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 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.

B. Notice. Immediately following the Clerk's entry of the above adjudication, order, allowance or denial on the docket, the Clerk shall notify all parties by mail of the entry of said adjudication, order, allowance or denial. The Clerk shall note on the docket the names of the persons to whom he/she mails such notice, with the date of the mailing. This notice shall include: 1) a copy of said adjudication, order, allowance or denial; 2) the date of the Clerk's entry, and 3) notice that each party has thirty (30) days from said 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 Department, findings of fact and conclusions of law to support said order and/or adjudication.

E. Notification to All Parties by Clerk. Immediately upon the filing of said findings of fact and conclusions of law the Clerk shall mail a copy to each party.

Rule 15. Appeal

A. Claim of Appeal. An appeal, as permitted by [G.L. c. 119, s. 27](#), shall be governed by the Massachusetts Rules of Appellate Procedure. The claim of appeal shall be taken to constitute the “notice of appeal” for the purposes of applying the Massachusetts Rules of Appellate Procedure. The notice of appeal and any request for a transcript, if required, shall be signed by the party or parties taking the appeal, unless the appellant is the minor subject of the action; 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 any conclusions of law.

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 2-07: Time Standards

The Juvenile Court Department has jurisdiction in three major case types including delinquency/youthful offender proceedings, child in need of services proceedings (CHINS) 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 three case types. The Juvenile Court has jurisdiction, by statute, of matters ancillary to these three case types including guardianship petitions, paternity complaints, equity 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. In some instances, the Juvenile Court has become the first arbiter of issues more properly addressed by other institutions.

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 January 1, 2007. 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

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).

These time standards do not apply to juvenile jury trials heard in the district courts.

Benchmarks:

1. Arraignment (within fifteen (15) days from the issuance of the complaint)
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.); necessity for extended pretrial hearings such as Bishop/Fuller or similar proceedings but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications.

II. CHILD IN NEED OF SERVICES PROCEEDINGS (CHINS, G.L. c. 119 §§39E-H)

A. Filing of application to preliminary hearing: ninety (90) days.

At preliminary hearing:

- a. Petition to issue, or
- b. Petition not to issue and referral for informal assistance for period not to exceed six (6) months^{*}, or
- c. Application dismissed

^{*}Twelve (12) months where parents and child have agreed in writing to extension of informal assistance for period not to exceed six (6) months.

B. Issuance of petition to adjudication/disposition: six (6) months.

Though CHINS cases may be filed as stubborn, runaways, truants or habitual school offenders, in the case of runaways, the CHINS case starts with an application for a warrant for a runaway which may not be served for many months, thus departing from the time standards. Numerous other reasons may delay the final disposition of cases, such as 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.

III. CARE AND PROTECTION/TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

Care and Protection/Termination of Parental Rights cases are governed by statute, G.L. c. 119, §§24, 26 and G.L. c. 210, §3, which incorporated the mandates of the Federal Adoption and Safe Families Act into the General Laws in April 1999, as well as by Juvenile Court Rules.

A. Filing of petition to final order of adjudication and permanent disposition: Fifteen (15) months/eighteen (18) months.

Benchmarks:

- 1. Emergency custody hearing (G.L. c. 119, §24: within seventy-two (72) hours of ex parte transfer of custody except by agreement of parties for good cause shown)
- 2. Appointment of Court Investigator (G.L. c. 119, §24: after issuance of precept and notice to parents)
- 3. Filing of court investigator report ([Juv. Ct. R.7](#): within sixty (60) days after the appointment of the investigator unless the court otherwise orders)
- 4. Motion/Status ([Juv. Ct. R.10](#): within ninety (90) days after filing)
- 5. Pre-trial Conference ([Juv. Ct. R.11](#): within one hundred and twenty (120) days after filing)
- 6. Permanency hearings for children in Department of Social Services' custody (G.L. c. 119, §29B: twelve (12) months from the transfer of custody and annually thereafter)

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

The court's finding that certain circumstances exist, which, by statute (G.L. c. 119, §29C), relieve the Department of Social Services of the requirement to make reasonable efforts to prevent removal or to reunify the family does not necessarily result in an uncontested trial.

C. Decision and Findings: Within ninety (90) days from the close of evidence.

Effective January 1, 2007.

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 unforeseen 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.