

Superior Court Standing Order 2–21

Fifth Updated Protocol Governing Superior Court Operations During the Coronavirus (COVID–19) Pandemic

Applicable to All Courts

Pursuant to the Supreme Judicial Court’s Fifth Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID–19 (Coronavirus) Pandemic, effective March 1, 2021 (SJC–Mar. 1 Order), the Superior Court issues this standing order to update its protocols governing court operations during the pandemic. This standing order is effective March 1, 2021, and rescinds and supersedes Standing Order 9–20, which became effective October 1, 2020. This standing order will remain in effect until further order of the court.

To minimize the risk of transmission of the Coronavirus, the court will, with exceptions noted below, continue to conduct most civil and criminal court business virtually, i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system. For any videoconference hearing involving a self-represented litigant with limited access to, or limited facility with, videoconference technology, the court will assist the litigant to enable participation by videoconference or will offer an alternative means of participating virtually.

I. Proceedings presumptively held virtually

A. The following matters will be addressed by videoconference or telephone, subject to constraints noted below, to the extent feasible in light of (1) limited court staffing, (2) technological constraints, (3) the need to prioritize emergency or other matters, (4) the need to protect constitutional rights, and (5) other legal constraints such as federal or state moratoria on evictions or foreclosures. Before ordering a hearing that presumptively would be held virtually to be held in person instead, either because a virtual hearing would be impracticable or inconsistent with the protection of constitutional rights, the judge will consult with the Clerk, the parties, Security, and Probation, as appropriate.

1. Civil matters:

- a) Processing and ruling on motions submitted under Superior Court Rule 9A
- b) Rule 16 conferences
- c) Final pre-trial conferences
- d) Status conferences
- e) Hearings on non-evidentiary motions
- f) Probable cause hearings for sexual dangerousness, under G. L. c. 123A, § 12, provided that any finding of probable cause made after a hearing by videoconference or telephone shall be without prejudice to the respondent’s right to an in-person hearing to be held when feasible
- g) Actions concerning compelled isolation or quarantine pursuant to Superior Court Administrative Directive 20–1 (Protocol Governing Actions to Enforce Isolation or Quarantine Orders)

- h) Requests for temporary restraining orders
- i) Proceedings pursuant to G. L. c. 209A (abuse prevention orders) and G. L. c. 258E (harassment prevention orders). Virtual hearings shall be conducted by videoconference unless impracticable, in which case the hearing may be conducted by telephone. An in-person hearing may be permitted by a judge if requested by one or more of the parties, or as ordered by a judge. In determining whether to permit an in-person hearing to occur, the judge should take into consideration all relevant factors, including but not limited to the positions of the parties, case scheduling constraints, building and courtroom occupancy limits, and social distancing requirements.

2. Criminal matters:¹

- a) Arraignment if the defendant is in custody
- b) Bail reviews
- c) Bail determinations following arrest or surrender pursuant to a Superior Court warrant
- d) Dangerousness hearings, under G. L. c. 276, § 58A, if neither party informs the court prior to the hearing that such party plans to call one or more witnesses.
- e) Conferences
- f) Hearings on non-evidentiary motions
- g) Guilty pleas, if the defendant waives physical presence and the judge finds the defendant can and does make a knowing and voluntary waiver of rights including the right to physical presence.

- B. For virtual hearings, no one other than court personnel may be physically present in the courtroom without the approval of the judge conducting the hearing. A party or counsel for a party may be present only if the judge determines exceptional circumstances exist for such presence. Public access will be available through designated telephone lines provided on the websites of the Superior Court Clerks' Offices, unless, in a particular case, access is provided by some other means ordered by the court.

¹ Promptly upon receipt of any motion seeking funds for expenses necessary to establish medical parole eligibility for a person serving a committed sentence, or to put in place a release plan for such a person or for a person held pending trial or pending a final hearing on a probation violation, the Clerk shall bring such motion to the attention of the RAJ, or of any judge designated by the RAJ. The RAJ or designated judge may allow any such motion on the papers or may direct the prompt scheduling of a hearing by videoconference or telephone. See *CPCS v. CJTC (No. 2)*, 484 Mass. 1029, 1032 (2020).

II. In-person proceedings and entry to courthouses (see Part IV below concerning trials)^{2,3}

A. The following matters shall be conducted in person:

1. Proceedings under G. L. c. 112, § 12R (“Mary Moe” petitions) unless the petitioner opts for a hearing by teleconference. If the petitioner opts for a hearing by teleconference, the court shall conduct the hearing by videoconference unless the petitioner is unable to access videoconference technology, in which case the hearing shall be conducted by telephone.
2. Wiretap warrants
3. Any other matter which a judge, after consultation with the Clerk, the parties, Security, and Probation (if applicable), determines cannot be resolved virtually because it is not practicable or would be inconsistent with the protection of constitutional rights.

B. The following matters may be conducted in person:

1. Civil matters:
 - a) Bench trials
 - b) Evidentiary hearings
2. Criminal matters:
 - a) Arraignments if the defendant is not in custody
 - b) Dangerousness hearings, under G. L. c. 276, § 58A, if either party informs the court before the hearing that such party plans to call one or more witnesses
 - c) Guilty pleas
 - d) Bench trials
 - e) Evidentiary hearings on motions
 - f) Evidentiary hearings on contested probation violations.

C. Anyone seeking to arrange an in-person hearing for a matter other than those specified in Parts II(A) or (B) hereof should file a written motion with the relevant Clerk’s Office, with notice to opposing counsel.

² For in-person proceedings, the following essential court personnel will be assigned: (1) a judge, assigned by the Regional Administrative Justice (RAJ); (2) a Clerk or an Assistant Clerk, assigned by the Clerk; (3) a court officer, assigned by the Chief Court Officer or designee; and (4) a probation officer or associate probation officer, if necessary.

³ Where an in-person hearing is scheduled, a party may move that the hearing be conducted virtually, and the judge scheduled to preside at the hearing will rule on the motion. Alternatively, a judge, upon request, may authorize a participant (an attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with the protection of constitutional rights. A participant who requests to appear virtually for an otherwise in-person proceeding shall have no grounds to object to other participants appearing in person.

- D. Entry to a courthouse is limited to the following persons, subject to appropriate screening as established by the Supreme Judicial Court's Third Order Regarding Access to State Courthouses & Court Facilities, effective August 3, 2020, and any amendments or successor orders issued by the SJC:
1. Personnel who work in the courthouse
 2. Persons:
 - a) Attending an in-person court proceeding
 - b) Conducting in-person business with a Clerk's Office
 - c) Reporting for jury service
 - d) Meeting with a probation officer or probation staff person
 - e) Conducting business at other offices that are open to the public and housed in the courthouse.^{4,5}
- E. Courtroom attendance for in-person proceedings is limited to the following:
1. Court personnel
 2. Attorneys
 3. Parties
 4. Potential or empaneled trial or grand jurors
 5. Witnesses
 6. Other necessary persons as determined by the presiding judge
 7. The presiding judge shall determine the method by which members of the public, including the "news media" as defined in Supreme Judicial Court Rule 1:19(2), may access the proceeding, which may include allowing them to sit in the courtroom, provided there is sufficient space for them to maintain appropriate physical distance.
- F. If a judge determines that a proceeding must be conducted in person, and the courthouse where the Superior Court sits in the County in which the matter is pending is closed because of actual or suspected infection of courthouse personnel, the RAJ, in consultation with the Clerk and relevant RAJ of another county or region, or with the First Justice of another Trial Court department, may make arrangements to conduct the hearing in another courthouse.

III. Clerks' Offices

- A. Clerks' Offices remain physically open to the public to conduct court business but, to the extent possible, will continue to conduct business virtually to maintain limits on the numbers of persons entering courthouses. A Clerk's Office may provide a drop-box in a secure and accessible location at the courthouse for the benefit of those persons who choose to hand deliver pleadings or other documents for filing.

⁴ See SJC–Mar. 1 Order, par. 4, for rules governing the regulation of the number of persons permitted to enter a courthouse at any one time.

⁵ See SJC–Mar. 1 Order, par. 8, for rules governing the use of cell phones and other personal electronic devices (PEDs) in courthouses.

- B. Each Clerk has established and published on the COVID–19 webpage (<https://www.mass.gov/guides/court-system-response-to-covid-19>) a policy regarding how documents may be submitted to that Clerk’s Office. Telephone numbers of Clerks’ Offices are provided in the Addendum to this Order.
- C. Each Clerk is authorized to require the physical presence of additional staff as may be necessary to handle court business as provided herein, provided that any such increase in staff presence will be conducted in accordance with health and safety protocols established by the Trial Court.
- D. Clerks’ Office personnel shall follow the policies and guidance provided by the Department of Human Resources in the Trial Court Office of Court Management. If illness or exposure to the virus of personnel in any Clerk’s Office affects availability of personnel to the extent that a Clerk’s Office lacks sufficient personnel to continue operations, including remote operations, the Clerk and the Administrative Office of the Superior Court will consult with other clerks to arrange assistance for the affected office.

IV. Trials

- A. Bench trials. Judges shall continue to schedule bench trials in civil and criminal cases. Priority should be given to criminal cases where the defendant is in custody, with the highest priority given to those defendants in custody the longest.
 - 1. Civil bench trials may be conducted virtually, in the trial judge’s discretion.
 - 2. Criminal bench trials shall be conducted in person, unless the parties and trial judge all agree to conduct the trial virtually.
- B. Jury trials. Pursuant to the SJC–Mar. 1 Order, par. 9, Phase 2 of the resumption of jury trials will begin on March 1, 2021, in accordance with the July 31, 2020 report of the Jury Management Advisory Committee (JMAC), as modified.⁶ Phase 2 trials will be limited to juries of six (plus alternates), with priority given to criminal cases where defendants are in custody. Trial locations, as well as case types and specific cases, will be determined by the Chief Justice of the Superior Court, in consultation with Superior Court RAJs and with the Chief Justice of the Trial Court and Chief Justices of other Trial Court departments affected. Trials will be limited to one at a time in each location to start, but may be expanded as conditions permit.
 - 1. Juries of six.
 - a) Criminal cases ordinarily tried to juries of twelve may be tried to juries of six with the consent of the defendant(s), in which case each defendant will be limited to four peremptory challenges and the Commonwealth to

⁶ Currently, Phase 2 is expected to last two months, but plans may need to be changed in the continuing effort to balance health concerns with the constitutional right to a trial by jury. SJC–Mar. 1 Order, par. 9.

as many challenges as equal the total number to which all defendants in the case are entitled, regardless of whether additional jurors are empaneled.

- b) Civil cases ordinarily tried to juries of twelve, except sexually-dangerous-person cases under G. L. c. 123A (SDP cases), shall be tried to juries of six, with or without the consent of the parties, with each party limited to four peremptory challenges, regardless of whether additional jurors are empaneled.
- c) SDP cases ordinarily tried to juries of twelve may be tried to juries of six with the consent of all parties, in which case each party will be limited to four peremptory challenges, regardless of whether additional jurors are empaneled.

2. Scheduling and prioritizing trials

Each Regional Administrative Justice (RAJ) will oversee the scheduling of jury trials, exercising discretion based on the factors set forth below, giving due consideration to the goals of achieving timely resolution of each matter to the extent feasible while minimizing risk to all participants, including jurors and court personnel. The RAJ will consult with bar leaders and will coordinate with First Justices or RAJs of other court departments in the courthouse or court complex, as well as Security and Facilities Department managers, regarding use of spaces, personnel, and other resources.

Factors to be considered in prioritizing cases for jury trial:

- a) All cases — trial readiness. In each case, before a jury trial date is set, a judge (the conference judge) will hold a conference to determine, as definitely as possible: that all discovery is complete; all motions have been decided other than motions *in limine* to be decided at the time of trial; all expert disclosures have been made; all efforts at resolution have been exhausted; any necessary transcripts of previous events have been obtained; and parties, counsel, and witnesses are ready and available to proceed. The conference will also address any need for interpreters, any particular witness concerns, and any other logistical requirements for the trial. After the conference judge has held such a conference and made such determination, and after consultation with the RAJ, the conference judge or the RAJ shall set a jury trial date, subject to approval by the Chief Justice, in order of priority based on the criteria set forth below (priority criteria). At least three days before such conference, counsel and any self-represented litigants shall file and serve a conference memorandum addressing the priority criteria as they apply to the case, and counsel and any self-represented litigants shall attend the conference prepared to address the priority criteria.

- b) Criminal cases. Criminal cases shall be prioritized according to the following criteria:
- i. Any applicable statutory prioritization.
 - ii. The seriousness of the offense charged.
 - iii. Whether and for how long the defendant has been in custody. For this purpose, any period of bail revocation shall be excluded.
 - iv. Any previously issued judicial order for speedy trial.
 - v. Whether and when the defendant has objected to any continuance of a trial date.
 - vi. Whether and when a trial of the case has begun and concluded with a mistrial.
 - vii. Whether a child, elderly person, or a person whose health or medical condition warrants special consideration is an alleged victim or necessary witness.
 - viii. Whether any alleged victim or necessary witness is expected to become unavailable due to illness, military deployment, or other unavoidable reason.
 - ix. If the defendant is not in custody, whether the defendant is subject to pre-trial conditions that impose substantial constraints on the defendant's liberty.
 - x. The length of the trial, and any potential to minimize necessary length by the use of stipulations or videoconference testimony for some witnesses.
- c) SDP cases under G. L. c. 123A, § 12, in which the respondent has been held in custody beyond the conclusion of the criminal sentence, shall take priority over other civil cases and over criminal cases in which the defendant is not in custody. Such cases shall be prioritized according to the length of time the respondent has been so held.
- d) SDP cases under G. L. c. 123A, § 9, shall take priority over civil cases, and shall be prioritized according to the length of time since the date the petitioner was last adjudicated sexually dangerous. The Suffolk County RAJ for criminal business shall determine the priority of these cases in relation to criminal cases.
- e) Civil cases. Criminal cases and SDP cases shall take priority over other civil cases, provided that a civil case may be scheduled as a back-up case to each criminal or SDP case scheduled for jury trial. Civil cases shall be prioritized according to the following criteria:
- i. Any applicable statutory prioritization.
 - ii. Any previously issued judicial order for speedy trial.
 - iii. Whether and when any party has objected to any continuance of a trial date.

- iv. Whether and when a trial of the case has begun and concluded with a mistrial.
- v. Whether a child, elderly person, or a person whose health or medical condition warrants special consideration is a necessary witness.
- vi. Whether any necessary witness is expected to become unavailable due to illness, military deployment, or other unavoidable reason.
- vii. Whether expert witnesses are necessary and cannot be presented by means of videotaped deposition testimony.
- viii. Whether a preliminary injunction or other court order is in place pending trial.
- ix. How long the case has been ready for trial.
- x. The length of the trial, and any potential to minimize necessary length by the use of stipulations or videoconference testimony for some witnesses.

C. Trial continuances ordered by the SJC are excluded from speedy-trial calculations under Mass. R. Crim. P. 36. See SJC–Mar. 1 Order, par. 10 & n.5.

V. Other provisions governing cases and court operations

- A. Conference concerning postponement. A party who has had a trial or other non-emergency hearing postponed as a result of the SJC–Mar. 1 Order or a prior SJC order (see SJC–Mar. 1 Order, par. 10 n.4 for list of prior SJC orders) may, by motion, apply for a conference with the court to address matters arising from the postponement. See SJC–Mar. 1 Order, par. 12. The conference shall occur by videoconference or telephone.
- B. Bail or conditions of release. In criminal cases, where appropriate, a defendant may seek reconsideration of bail or conditions of release. See SJC–Mar. 1 Order, par. 12. Hearings on such requests may be conducted by videoconference or telephone where feasible. Persons in custody shall not be transported for such hearings.
- C. Grand juries. As provided in SJC–Mar. 1 Order, par. 13, no new grand jury shall be empaneled without the approval of the RAJ who, after consultation with the Chief Justice of the Superior Court, shall set such conditions as may be necessary to minimize risk to members of the grand jury, court personnel, and witnesses. The RAJ or the Chief Justice of the Superior Court may consult with the Jury Commissioner regarding such conditions. As permitted by Rule 5 of the Massachusetts Rules of Criminal Procedure, which provides that "the court shall select not more than twenty-three grand jurors to serve," a grand jury of fewer than 23 grand jurors may be empaneled. Regardless of the number empaneled, a grand jury may sit only where there is a quorum of at least thirteen grand jurors, and may return an indictment only if at least twelve of the sitting grand jurors vote to indict.
- D. Video and telephone equipment. Each RAJ shall advise Deputy Court Administrator (DCA) Elaina Quinn regarding any deficiency in equipment necessary to conduct proceedings by

video or telephone. DCA Quinn shall work with the appropriate personnel in the Office of Court Management to address any such deficiency as promptly as possible.

- E. Administrative Office of the Superior Court (AOSC). The AOSC shall remain open with skeleton staff and through remote operations. AOSC staff shall follow the policies and guidance provided by the Department of Human Resources in the Office of Court Management. The AOSC will remain open for accepting returns of wiretap warrants; a telephone call to the AOSC at 617-788-8130 is advisable before delivering a return.

So Ordered,

/S/ Judith Fabricant

Judith Fabricant
Chief Justice of the Superior Court

Adopted: February 26, 2021

Effective: March 1, 2021

Addendum to Superior Court Standing Order 2–21

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