COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss. No. SJ-2020-

COMMITTEE FOR PUBLIC COUNSEL SERVICES and
MASSACHUSETTS ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS,
Petitioners,

v.

CHIEF JUSTICE OF THE TRIAL COURT,
Respondent.

EMERGENCY PETITION FOR RELIEF PURSUANT TO G. L. c. 211, § 3

EXHIBITS

Exhibit A

Affidavit of Danielle C. Ompad, PhD regarding SARS-CoV-2 infection (otherwise known as COVID-19) in correctional settings

I, Dr. Danielle C. Ompad, state that the following is a true and accurate statement to the best of my knowledge and belief:

1. I am currently an Associate Professor of Epidemiology at the New York University School of Global Public Health. I have a BS in biology from Bowie State University, and an MHS and PhD in infectious disease epidemiology from the Johns Hopkins School of Public Health.

2. Classically trained as an infectious disease epidemiologist, I am an expert on social determinants of health associated with urban life. My research is focused on the health and wellbeing of people living in urban settings, especially communities that are highly marginalized and vulnerable. Many of these communities have high rates of heroin, crack, and/or cocaine use. My program of research is focused on individual- and structural-level risk and protective factors for the initiation, use, and cessation of specific drugs as well as risk for infectious diseases such as HIV, hepatitis B and C viruses (HBV and HCV), and sexually transmitted infections like herpes and human papillomavirus. Additional and related programs of research include (1) understanding sexual risk and (2) vaccine access among people who use drugs (PWUD) and other vulnerable populations.

3. I have been working with people who use drugs since 1997, many of whom have experience with the criminal justice system. I am providing this affidavit about the risk of SARS-CoV-2 infection, also known as COVID-19 or the novel coronavirus, because correctional settings may be particularly vulnerable to the effects of this pandemic.

4. I am the author of more than 125 peer-reviewed research articles, six book chapters, and two encyclopedia entries.

5. **Overview of the COVID-19 pandemic**
    a. The first case of COVID-19 was diagnosed in Wuhan, China on 29 December 2019. The virus is transmitted through droplets and contaminated surfaces,[1] and possible airborne transmission.[2] Both symptomatic and asymptomatic people can transmit COVID-19.[3] The average incubation period (i.e., time from infection to symptoms) for COVID-19 has generally been reported to be 5.1 days and 97.5% of those who develop symptoms will do so within 11.5 days.[4]
    b. Older adults and people with underlying health conditions like cardiovascular diseases, respiratory diseases, diabetes, and liver disease are at increased risk for severe COVID-

[1] Adhikari SP, Meng S, Wu YJ, et al. Epidemiology, causes, clinical manifestation and diagnosis, prevention and control of coronavirus disease (COVID-19) during the early outbreak period: a scoping review. Infect Dis Poverty. 2020;9(1):29. Published 2020 Mar 17. doi:10.1186/s40249-020-00646-x

[2] van Doremalen N, Bushmaker T, Morris DH, et al. Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1 [published online ahead of print, 2020 Mar 17]. N Engl J Med. 2020; 10.1056/NEJMc2004973. doi:10.1056/NEJMc2004973

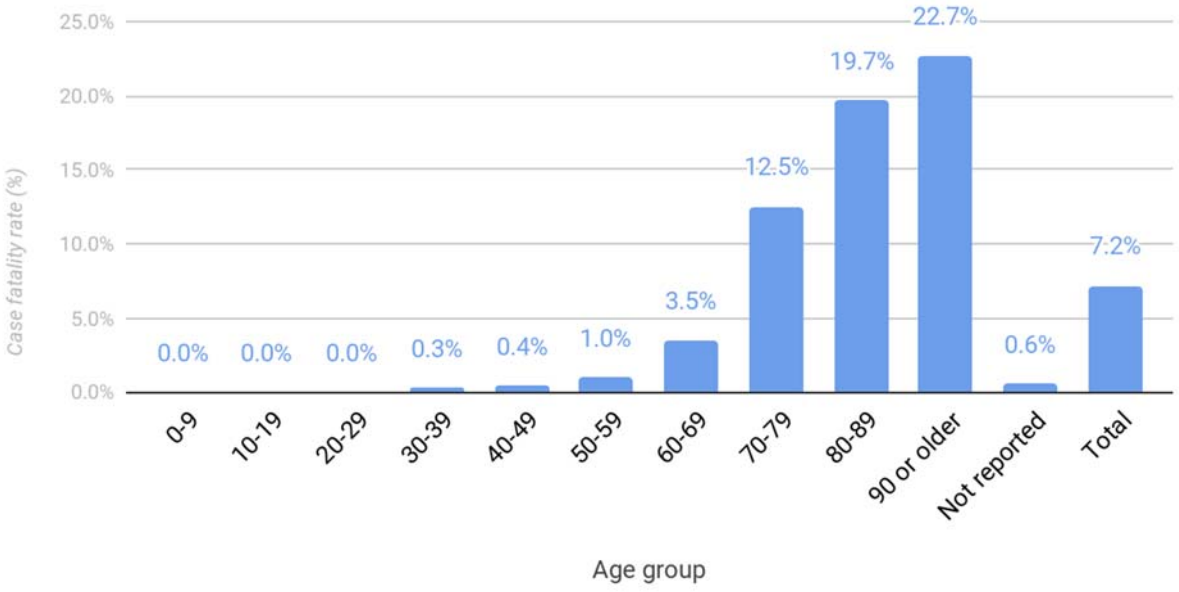
[3] Tong ZD, Tang A, Li KF, et al. Potential Presymptomatic Transmission of SARS-CoV-2, Zhejiang Province, China, 2020 [published online ahead of print, 2020 May 17]. Emerg Infect Dis. 2020;26(5):10.3201/eid2605.200198. doi:10.3201/eid2605.200198

[4] Lauer SA, Grantz KH, Bi Q, et al. The Incubation Period of Coronavirus Disease 2019 (COVID-19) From Publicly Reported Confirmed Cases: Estimation and Application [published online ahead of print, 2020 Mar 10]. Ann Intern Med. 2020;10.7326/M20-0504. doi:10.7326/M20-0504

19 complications and death. Of note, risk for death appears to increase substantially with age although actual age-specific death rates should be considered in the context of a lack of widespread testing in most countries, including the U.S. In most countries testing is being conducted among hospitalized cases and health care workers. South Korea is the exception, where mild and severe cases have been tested with over 300,000 people have been tested.

c. The case fatality rate (CFR) is the number of deaths divided by the number of people with COVID-19. Note that the denominator (i.e., number of people with COVID-19) is determined by the number of people tested as well as the testing criteria. Therefore, the CFR is likely inflated (i.e., an overestimate). The World Health Organization estimates that the overall case fatality rate is 3.4%.[5] Table 1 provides case fatality rates from Italy by decade of age. You can see that risk of death starts increasing among people in their sixties and then increases dramatically for each decade of life thereafter.

Figure 1. COVID-19 case fatality rates by age group as of 15 March 2020, Italy



d. Recent reporting revealed that young people are experiencing severe disease. The New York Times reported that approximately 40% of hospitalized COVID-19 cases were under the age of 60.[6]

e. Prevention of COVID-19 transmission is highly dependent on physical social distancing (i.e., at least six feet from other people) as well as hand washing and sanitizing with an alcohol-based hand sanitizer. Surfaces should be cleaned and disinfected regularly. Confirmed COVID-19 cases (with or without symptoms) must be quarantined to prevent transmission. People who have been exposed to someone who has (or may have) COVID-19 are asked to self-isolate for at least two weeks. Many US jurisdictions are

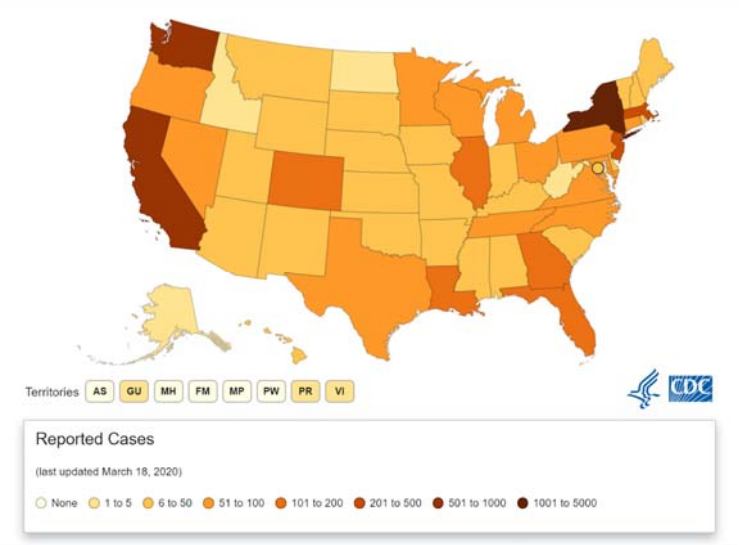
[5] WHO Director-General's opening remarks at the media briefing on COVID-19 - 3 March 2020 - World Health Organization, March 3, 2020

[6] Belluck P. Younger Adults Make Up Big Portion of Coronavirus Hospitalizations in U.S. New York Times. 20 March 2020

beginning to ask residents to engage in physical social distancing and self-isolation. Non-essential workers and businesses are being asked to close.

f. As 20 March 2020, the Johns Hopkins COVID-19 dashboard[7] reports that there are 259,215 cases worldwide and 11,283 deaths. COVID-19 cases have been detected in all 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands (Figure 2). As of 20 March 2020, there are 17,303 reported cases and 215 deaths in the United States.[8] Testing for COVID-19 infections has not been fully implemented and is mainly targeted to hospitalized people with COVID-19 symptoms (i.e., dry cough, fever, shortness of breath, acute respiratory distress syndrome), those with contact with a suspected or known cases, and health care workers with symptoms, known exposure to a case, or travel history to countries with cases; people with mild symptoms are not generally being tested because of the limited supply of tests. As a result, any case counts are an underestimate of the true number of cases.

Figure 2. Distribution of COVID-19 cases in the United States as of 18 March 2020 (U.S. Centers for Disease Control and Prevention)

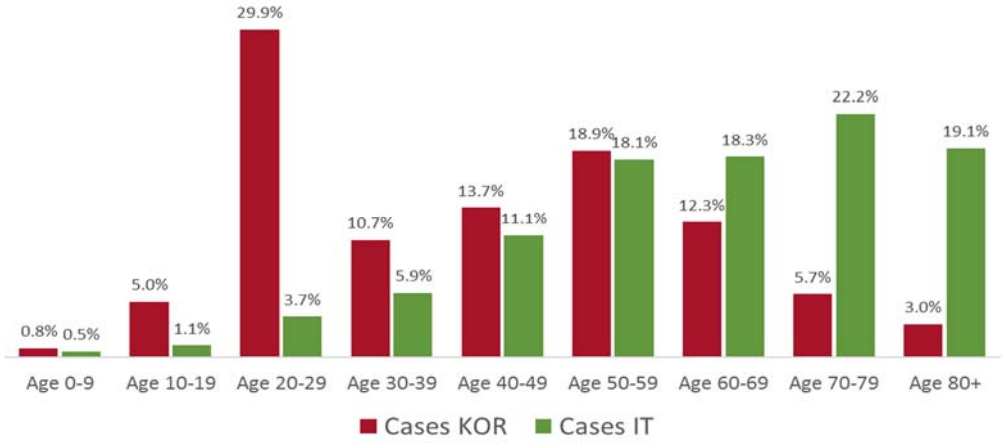


[7] https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6

[8] Reported cases include both confirmed and presumptive positive cases of COVID-19 reported to CDC or tested at CDC since January 21, 2020, with the exception of testing results for persons repatriated to the United States from Wuhan, China and Japan.

g. Data from South Korea, where testing is conducted for mild and severe cases (more than 300,000 tested so far),[9] suggest that individuals in their 20s have the highest prevalence of COVID-19 infection (Figure 3).[10]

Figure 3. COVID-19 cases (%) in South Korea and Italy by age group



6. Transmission risk in correctional settings

a. The risk of transmission of COVID-19 in correctional settings is high. Correctional facilities are often crowded and people who are incarcerated (PWI) are likely unable to maintain the requisite social distance of six feet. This is especially an issue within individual cells, where bunked beds make distancing of six feet impossible. Cafeteria areas and dormitory-type sleep quarters also create challenges to social distancing depending on how these spaces are organized and the number of people in the space at any one time.

b. Correctional facilities have significant flows of people from the community into the facility and back out. Correctional staff, visitors, and attorneys come to and from the facility from their home communities. In addition, newly incarcerated individuals, who have been circulating in the community prior to entering the facility, are coming into facilities. As a result, current PWI are likely to be exposed to COVID-19 through their interactions with correctional staff, visitors, attorneys, and newly arrived PWI.

c. Generally, there is a shortage of personal protective equipment (PPE) such as N95 masks in the U.S. Local jurisdictions are prioritizing health care facilities for scarce PPE, making access to such protective gear challenging for correctional facility staff.

d. Client reports from nine Massachusetts correctional facilities revealed that PWI at two facilities did not have access to soap at all and only three had access to free soap. In four facilities, PWI did not have access to hand sanitizer.

e. Thus, the risk for transmission in correctional facilities may be high. This will have implications for the general population from which correctional staff, visitors, and attorneys come and as a result, may place communities in which correctional facilities are located at enhanced risk of COVID-19 transmission as well as challenging the limited health care infrastructure and staff in local hospitals.

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[9] Zastrow M. South Korea is reporting intimate details of COVID-19 cases: has it helped? [news]. Nature 2020.
[10] https://medium.com/@andreasbackhausab/coronavirus-why-its-so-deadly-in-italy-c4200a15a7bf

7. **Risk for severe disease and death among incarcerated individuals**
    a. If COVID-19 enters correctional facilities, the likelihood that there will be severe cases is high. According to the Massachusetts Department of Corrections, 983 PWI (11.2%) were aged 60 and over in 2019 among 8,784 total PWI. As previously mentioned, older adults are at increased risk for severe COVID-19 complications as well as death.
    b. According to data from the 2011-2012 National Inmate Survey,[11] there is a substantial burden of disease among correctional populations. Approximately half of state and federal prisoners and jail inmates have ever had a chronic medical condition (defined as cancer, high blood pressure, stroke-related problems, diabetes, heart-related problems, kidney-related problems, arthritis, asthma, and/or cirrhosis of the liver). Twenty-one percent of state and federal prisoners and 14% of jail inmates have ever had tuberculosis, hepatitis B or C, or sexually transmitted infections (excluding HIV or AIDS). Table 1 displays lifetime prevalence of specific chronic conditions with implications for COVID-19 severity and death among state and federal prisoners and jail inmates. Note that older prisoners were about three times more likely than younger persons to have had a chronic condition or infectious disease in their lifetime.

Table 1. Lifetime prevalence of specific chronic conditions and infectious diseases with implications for COVID-19 severity and death among state and federal prisoners and jail inmates, 2011-2012 National Inmate Survey

Condition	State and federal prisoners (%)	Jail inmates (%)
Cancer	3.5	3.6
Diabetes	9.0	7.2
Stroke-related problems	1.8	2.3
Heart-related problems	9.8	10.4
Kidney-related problems	6.1	6.7
Asthma	14.9	20.1
Cirrhosis of the liver	1.8	1.7
Tuberculosis	6.0	2.5
Hepatitis B	10.9	1.7
Hepatitis C	2.7	5.6
HIV/AIDS	9.8	1.3

[11] Maruschak LM, Berzofsky M, Unangst J. Medical problems of state and federal prisoners and jail inmates, 2011-12. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics; 2015 Feb.

c. Collectively, these data suggest that there is a risk that a significant proportion of PWI will experience severe COVID-19 disease requiring hospitalization and many are at risk of dying from COVID-19.

8. Healthcare response and correctional settings

a. Healthcare provision in correctional settings is limited and a rapid increase in COVID-19 cases may overwhelm the capacity of a jail or prison's healthcare facilities. Moreover, health care providers in correctional settings may not have the equipment (i.e., ventilators) or specialty skill set to support PWI with severe COVID-19 disease.
b. There is already growing concern in the medical community that the need for intensive care unit beds and ventilators will outstrip the supply. We saw this in China, where new hospitals were built to treat the surge in patients. We are seeing this now in northern Italy, where unused wards are being retrofitted to serve as ICUs.
c. Severe COVID-19 cases in correctional facilities may be transferred to local hospitals. An outbreak at a local correctional facility, where there is a high likelihood of rapid transmission to a large number of people, could quickly overwhelm local hospitals.

9. What would an outbreak look like in a correctional facility?

a. There are no descriptions of a COVID-19 outbreak in a correctional facility to date. However, we can hypothesize what one may look like drawing on published reports of influenza and tuberculosis outbreaks – both respiratory infections – in correctional facilities.[12,13]
b. Introduction of the SAR-CoV-2 virus to the correctional facility could be from visitors, correctional staff, attorneys, and/or a newly incarcerated person. The person will likely be asymptomatic. As a result, the first facility-acquired COVID-19 case will not be detected until the that person is shows symptoms. This means that the person could have transmitting the infection from 2 to 14 days without knowing it.
c. The opportunities for transmission in correctional facilities are myriad and there is limited ability for PWI to engage in social distancing or self-isolation. The minimum cell size in the U.S. is 80 square feet based on American Correctional Association standards.[14] Some cells in Massacusetts are approximately 73 square feet. Beds can be bunked, ensuring that PWI are within six feet of each other in shared cells. Community meals in cafeteria/chow hall type settings as well as group recreation time in gyms and outdoor spaces also make social distancing challenging.
    i. At the Hampshire House of Corrections and North Central Correctional Institution in Gardner, groups of inmates are still going to "chow" and sitting and eating together with no instructions regarding social distancing.
    ii. At the Middleton House of Corrections, a whole unit has been quarantined in the gym.
d. Given the crowded conditions as well as challenges with social distancing and access to PPE for staff, the infections could spread rapidly and by the time the first case is identified many will have already been infected.
e. After the first symptomatic case is identified, the number of additional cases is likely to occur rapidly over the next days and weeks. The hospitalization rate is unknown at this

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[12] Sosa LE, Lobato MN, Condren T, Williams MN, Hadler JL. Outbreak of tuberculosis in a correctional facility: consequences of missed opportunities. Int J Tuberc Lung Dis. 2008;12(6):689–691.
[13] Awofeso N, Fennell M, Waliuzzaman Z, et al. Influenza outbreak in a correctional facility. Aust N Z J Public Health. 2001;25(5):443–446.
[14] http://www.aca.org/ACA_Prod_IMIS/docs/Standards%20And%20Accreditation/RH%20-%20Proposed%20Standards%20.%2012.4.2015.pdf

point, but given the high burden of high-risk conditions among PWI, we can anticipate the jail and prison health facilities will face shortages of beds, ventilators, PPE, testing supplies, and masks.

f. When correctional facility health services are exhausted, or the type of care needed for a patient is beyond the capacity of the facility, PWI COVID-19 cases will need to be transferred to local hospitals.

10. Summary

a. Incarcerating individuals who cannot make bail as well as current PWI that do not pose a danger to the community may increase the risk of COVID-19 outbreaks in correctional facilities when we consider the following issues:
   i. COVID-19 transmission is possible even when people are asymptomatic and the average incubation period is five days.
   ii. According to the Massachusetts Department of Corrections, 19.4% of PWI in 2019 were between the ages of 18 and 29. Some evidence suggests that this age group has the highest prevalence of COVID-19.
   iii. There is high risk for transmission in correctional facilities.
   iv. A substantial proportion of PWI aged 60 and older and/or with health conditions with implications for severe COVID-19 disease requiring hospitalization and possibly resulting in death
   v. The implications of a correctional facility outbreak for local hospitals.

b. By acting now and releasing a significant number of people who are currently detained you will save lives. You can prevent outbreaks in correctional facilities by reducing the number of people who are coming in from the community and reducing the number of people at risk within the facilities. This action would then protect correctional officers, attorneys, and PWI as well as the families of these groups.

c. This would result in the courts contributing to "Flatten the Curve" efforts because it will increase the ability of PWI and correctional facility staff to engage in social distancing inside as well as allowing released criminal-justice involved people to engage in social distancing and/or self-isolation (as appropriate) in the community, thereby reducing the likelihood of transmission and disease.

Signed this 20th day of March, 2020,

Danielle C. Ompad, PhD[15]
Associate Professor of Epidemiology
New York University School of Global Public Health

[15] This statement reflects my own views. I do not speak for New York University or any department therein.

Exhibit B

Trial Court of the Commonwealth
District Court Department

Paul C. Dawley
Chief Justice

Administrative Office
Edward W. Brooke Courthouse
24 New Chardon Street, 1st Floor
Boston, MA 02114-4703

TRANSMITTAL NO.	1280
Last Transmittal No. to:	
First Justices	1279
Other Judges	1279
Clerk-Magistrates	1279
Assistant Clerk-Magistrates	1279
CPOs	1279

M E M O R A N D U M

TO: District Court Judges, Clerk-Magistrates, Assistant Clerk-Magistrates, and Chief Probation Officers

FROM: Hon. Paul C. Dawley, Chief Justice

DATE: March 18, 2020

SUBJECT: **Amendment and Guidance on District Court Standing Order 2-20**

As a result of many questions arising from the issuance of yesterday's District Court Standing Order, I am writing to amend the Order and to provide guidance on the following issues:

- Hearings to be held on G.L. c. 276, § 58A motions filed at arraignment
- Plaintiffs seeking an order of protection under G.L. c. 209A or G.L. c. 258E to enter courthouses as provided below
- Authorization of police to enter courthouses as provided below. This authorization for access continues to be subject to compliance with the Supreme Judicial Court Order, dated March 13, 2020, entitled "Order Regarding Access to State Courthouses and Court Facilities," as well as screening protocols issued to court officers by court security.

1. Ex Parte Protection Order Proceedings

Any person attempting to access the court for the filing of a protection order pursuant to G.L. c. 209A, G.L. c. 258E or G.L. c. 140, §§ 131S & T, may be heard by telephone. Alternatively, if the Court Officer determines the person is not precluded by the SJC Standing Order referenced above or the health screening protocol conducted by the Court Officer, individual courts may, allow the person to enter the building and direct them to an area designated by the Clerk-Magistrate. If possible, the designated area shall be located in the immediate vicinity of the entrance to the courthouse and have telephone access to the clerk's office. Within the designated area, the person will be provided with paperwork consisting of the application for the requested protective order. Once completed by the person, the clerk will provide the documents to the judge. If a telephone is available to the petitioner, the judge may conduct a telephonic ex parte hearing. Such proceeding shall be recorded. If necessary and ordered by the judge, the petitioner will be escorted to the courtroom for a hearing. The judge will consider all information and issue a decision, a copy of which will be provided to probation, the petitioner,

and faxed to police for service on the defendant as in the normal course. If the proceeding is held in a courtroom, the proceeding shall be conducted in a manner that permits appropriate spacing of all participants. All parties will be provided notice of the two party hearing to be conducted telephonically in 10 days which will include instructions on how to participate in the telephonic conference call.

2. **58A Hearings.** I am asking that Courts conduct § 58A hearings by telephone or videoconference when the Commonwealth files a motion on a § 58A eligible offense and suggest the following procedures:

Commonwealth and Defendant to Identify Witnesses and Documentary Evidence to be Offered
The court should inquire whether the parties will proceed on documentary evidence. To the extent either party seeks witness testimony, they should identify to the court what witnesses they seek to call with a proffer and the court should rule on such request. Additionally, the parties should submit any documentary evidence they wish to submit at the hearing by email or fax to the clerk prior to the hearing, cc'ing opposing counsel. (the Commonwealth and defense counsel should exchange emails and the clerk should provide the fax and/or email address for the submission of documentary evidence). The judge should determine which witnesses to allow to testify and can rule on the admissibility of such evidence during the hearing.

Defense Counsel
It is expected that defense counsel will either be at the police station or will be able to speak with the defendant directly by telephone. After having sufficient time to consult, the hearing can be conducted either by utilizing the Polycom system or a telephone conference call line.

Telephonic / Videoconference Hearing & Witnesses
All parties should be on the designated line at the designated time with the police department facilitating the defendant's presence by video or telephone. If the hearing was continued and the defendant held at the jail, arrangements should be made with the jail to facilitate the defendant's appearance by video. If defense counsel is not in the same location as the defendant, the police should provide the defendant an opportunity to privately speak to defense counsel on a separate unrecorded line as needed during the hearing.

If the Commonwealth seeks to present witnesses other than police witnesses, they will need to arrange their ability to access the video or telephonic conference, and verify their identity to the court's satisfaction.

If defense counsel seeks to present witnesses, they will need to arrange their ability to access the video or telephonic conference, and verify their identity to the court's satisfaction.

If the judge allows a request for a witness other than police witnesses and that witness is unavailable or unable to participate by videoconference or telephonic conference call, the hearing may be continued to hear from any additional witnesses the court determines would be relevant. During such continuance the defendant should remain in custody.

Witnesses and counsel should participate by telephonic or videoconferencing.

Court Record

The judge and clerk should be in the courtroom. The proceeding should be recorded by FTR, and the case should be docketed in MassCourts. If conducting the hearing by telephone, each person must identify themselves prior to talking.

Order Without Prejudice / Next Date

Any order of detention under § 58A after a hearing by videoconference or telephone is to be issued without prejudice to the defendant's right to request an in-person hearing to be held when the current health emergency is over.

Additionally, G.L. c. 276, § 58A provides that "[t]he hearing may be reopened by the judge, at any time before trial, or upon a motion of the commonwealth or the person detained if the judge finds that: (i) information exists that was not known at the time of the hearing or that there has been a change in circumstances and (ii) that such information or change in circumstances has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community."

The case should be given a 30-day review date, and the Clerk-Magistrate should forthwith fax to the holding facility the required mittimus or writ of habeas corpus for the next review date.

Other General Considerations

- Standard

  If the Commonwealth files a motion for detention under G.L. c. 276, § 58A for a defendant who has been charged with a § 58A eligible offense, the court can hold a hearing by videoconference or telephone conference at which the Commonwealth must prove, by clear and convincing evidence, "that no conditions of release will reasonably assure the safety of any other person or the community." G.L. c. 276, § 58A. (Hearings that were scheduled prior to the issuance of Standing Order 2-20 should be held on their scheduled date consistent with the below procedures, unless there is good cause to reschedule the hearing).

- Conditions

  Although § 58A sets forth a list of conditions that can be considered, due to the limited resources as a result of the pandemic, electronic monitoring is the only reliable supervised condition currently available. Release with set conditions that are not actively monitored, would only provide a basis to take action upon learning of violations (e.g., prosecutor or police aware of stay away condition and initiate action upon learning of a violation).

- Hearsay Admissible

  "The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing and the judge shall consider hearsay contained in a police report or the statement of an alleged victim or witness." G.L. 276, s. 58A.

- Hold on First Appearance if Possible / Continuance Only on Good Cause

  The hearing must be held on the defendant's first appearance unless the Commonwealth establishes good cause to continue the hearing or the defendant requests a continuance.

  If there is good cause to continue the hearing, the court should make a finding that there is probable cause of an eligible offense which would require the defendant to continue be held pending the hearing. The Commonwealth may make the probable cause to arrest showing by means of a complaint issued in accordance with court rules or alternatively, by means of a police report. See *Commonwealth v. Lester*, 445 Mass. 250, 256, 261 (2005) (a properly issued complaint carries with it a finding by a judicial officer of "sufficient evidence to establish the identity of the accused . . . .and probable cause to arrest him" for one of the specific offenses enumerated in the statute).

  If not all witnesses are available on the defendant's first appearance, the court can consider commencing the hearing and continuing it to accommodate being able to hear from other witnesses the court determines are relevant.

3. Police Entry into Courthouses

Police officers should be permitted access into the courthouse upon approval by a judge or clerk Magistrate to conduct the business being allowed in the courthouse during the pendency of the Supreme Judicial Court's Order Limiting In-Person Appearances In State Courthouses That Cannot Be Resolved Through A Videoconference Or Telephonic Hearing and District Court Standing Order 2-20 or for any other reason deemed necessary by a judge or clerk-magistrate.

<u>Subscribing to the Complaint</u>
Pursuant to G.L. c. 276, § 22, the complainant is required to sign the complaint. Clerks may "examine on oath" the complainant via videoconference or telephonically if necessary, but the original complaint must be subscribed to by the complainant. To the extent that subscribing to the complaint requires the police to come into the courthouse to do so, they should be permitted entry. If the arraignment on the new complaint is deferred to a later date, Clerk-Magistrates may delay the police signing of the complaint until that date.

In-person Application for a Warrant or Search Warrant

Notwithstanding § I of District Court Standing Order 2-20, police should be permitted, with the authorization of a judge or Clerk-Magistrate, to enter the courthouse to apply for a warrant or search warrant so long as the officer is not prohibited from entry pursuant to the Supreme Judicial Court's Order Regarding Access to State Courthouses & Court Facilities and the Magistrate agrees that the officer should be permitted entry into the building to apply for the warrant. Note, however, that, during the pendency of the Supreme Judicial Court's Order Limiting In-Person Appearances In State Courthouses That Cannot Be Resolved Through A Videoconference Or Telephonic Hearing and District Court Standing Order 2-20, police may not be required to come into the courthouse to do so. Under art. 14 and G.L. c. 276, § 2B, the oath and personal appearance are required to support the affidavit that establishes probable cause for the warrant except where the officer seeking the warrant exhausted all reasonable efforts to find a magistrate or judge before whom he could personally appear. *Commonwealth v. Nelson*, 460 Mass. 564, 573 (2011). District Court Standing Order 2-20 recognizes that the circumstances presented by the COVID-19 virus may qualify as the "rare case" in which an officer may rely on communication by telephone and facsimile transmission or secure email to obtain an otherwise valid search warrant. *Nelson*, 460 Mass. at 573. Individual magistrates may determine and establish the best process to receive warrant applications remotely during the pendency of these orders if police are unable to physically appear before a magistrate.

Please do not hesitate to contact this office with any questions, and thank you for your dedication and hard work as the District Court works through this unprecedented process. The Administrative Office will continue to provide updated guidance as additional issues arise.