

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

SJC-12926

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

v.

CHIEF JUSTICE OF THE TRIAL COURT, ET AL.,
Respondents

SPECIAL MASTER'S REPORT AND RECOMMENDATION

In responding to the worsening COVID-19 pandemic, the Commonwealth and its citizens have been called on to take unprecedented actions, resulting in significant disruption to every aspect of our community. The Special Master commends the Trial Court, Department of Correction, Probation Department, each of the county Sheriffs' offices, and District Attorneys' offices for taking prompt actions to reduce the risk of infection among inmates, including: a stepping up of vigorous cleanings of facilities and spaces; increasing supplies of hygienic products; restricting visitor access; quarantining individuals displaying symptoms of COVID-19; suspending third-party programming; facilitating inmate telecommunications with counsel, families and loved ones; and working cooperatively and expeditiously in response to individual petitions for release for non-violent offenders, as warranted.

The Court seeks to support the existing efforts of law enforcement, corrections officials, and the defense bar to reduce the population of non-violent, low risk prisoners in this unique circumstance. Public health experts and federal, state and local government officials have issued numerous advisories about the importance of continued social distancing for an extended period of time, and that the risk of spread of COVID-19 within our communities may continue to threaten the health and safety of our citizens for an indeterminate period of time. Concern for the public health, including that of the public at large, and the inmates and the staff of our corrections and court system, warrants, as numerous other jurisdictions across the country have recognized, that any and all reasonable actions be taken to reduce the potential spread of COVID-19 in a manner consistent with ensuring public safety.

WHEREFORE, the Special Master hereby reports and recommends that, pursuant to the superintendence powers granted to the Court under G.L. c. 211, § 3, the Court order as follows:

I. GUIDANCE FOR PRETRIAL PROCEEDINGS

1. In probation detention and violation hearings, pre-trial detention hearings, and bail hearings, the Trial Courts shall consider the risk that a defendant or probationer may either contract COVID-19 or infect others as a factor to be considered in any decisions regarding detention. In addition, given the high risk posed by COVID-19 for people who are more than 60 years old or who suffer from a high-risk condition as defined by the Center for Disease Control (“CDC”) that renders them more vulnerable to COVID-19, the age and health of any defendants who fall in the aforementioned categories should be factored into decisions regarding detention.
2. Any existing warrants or warrants issued after the date of this Order for non-violent probation violations; failure to appear; failures to pay outstanding fees and fines; and for alleged commission of new offenses other than “Excluded Offenses,” as defined in **Appendix A**, are suspended until 10 calendar days after the COVID-19 state of emergency declared by Governor Charles Baker on March 10, 2020 (the “COVID-19 State of Emergency”) is lifted in the Commonwealth. This subsection shall NOT apply to any warrant issued for a defendant who has violated a condition of release or probation term pertaining to a stay-away order or other no contact order involving GPS monitoring.
3. All existing conditions of release and/or terms of probation that are inconsistent with the principles of social distancing as outlined by the CDC and/or Department of Public Health (“DPH”)¹ shall either (i) not be enforced, (ii) converted by the Probation Department to a condition consistent with social distancing, (iii) or shall be suspended until 10 calendar days after the COVID-19 State of Emergency is lifted in the Commonwealth (*e.g.*, in person check-in requirements shall be done by video or telephone and drug testing that cannot be completed with adherence to social distancing guidelines shall be suspended). All stay-away and no-contact orders issued as part of any conditions of release or terms of probation are to remain in effect and are not impacted by this Order.

¹ See United States Center for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (March 23, 2020) at 4. (Online at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>); Massachusetts Department of Public Health, *DPH Public Health Advisory: Stay-at-Home Advisory for Individuals over 70 and for those with underlying health conditions; and Safe Practices for the General Public*, (March 24, 2020) at 1. (Online at <https://www.mass.gov/news/dph-public-health-advisory-stay-at-home-advisory-for-individuals-over-70-and-for-those-with>).

II. REVIEW PROCESS FOR CONSIDERING THE RELEASE OF CERTAIN INMATES

The following procedures (the “Release Review Process”) shall be expeditiously implemented to determine whether individuals shall be released from custody, and to do so in a manner that balances and preserves the safety of the public and the safety of those in the Commonwealth’s detention and correctional facilities:

A. Creation of Release Review Committees

In each county there shall be created a committee (the “Release Review Committee”) comprised of representative(s) from the District Attorney’s Office, representative(s) from the defense bar,² and representative(s) of the clerk’s office of the Trial Courts. Where appropriate, the District Attorney shall confer with a representative of the Probation Department, representative(s) from the county Sheriff, a public health advisor, and representative(s) of the Department of Correction. **These committees shall be created within 24 hours of the issuance of this Order and the District Attorney representative(s) in each county shall report the composition of this committee to the Special Master within that 24 hour time period.** Promptly upon issuance of this Order, the Chief Justices of the Superior Court, District Court, Boston Municipal Court (where applicable), and Juvenile Court shall designate a “Primary Trial Court Judge(s)”, a first back-up, and a second back-up at each level, in each county, to hear cases from each county’s Release Review Committee.

B. Identification of pre-trial detainees and probationers eligible for the Release Review Process

1. Pre-trial detainees and probationers meeting any of the following criteria shall be placed into the Release Review Process and shall be presumed to be released from detention, subject to the individualized assessment set forth in the Release Review Process described herein:
 - a. Any person who has not been determined to be dangerous under G.L. c. 276, § 58A and is charged with an offense other than (i) an Excluded Offense, or (ii) a violation of a stay-away or no-contact order issued as a condition of probation;
 - b. Any person who is currently detained awaiting trial on a cash bail of \$5,000 or less, has not been determined to be dangerous under G.L. c. 276, § 58A, who would be otherwise eligible for release if they could post the bail imposed in their case, and has not been incarcerated for an Excluded Offense in the last 5 years;
 - c. Any person who is currently detained awaiting a probation violation hearing, unless (i) the person has been incarcerated for an Excluded Offense in the last

² The Petitioners shall be responsible for convening a team of attorneys to represent the defense bar in the Release Review Committees and shall assist with creating release plans for inmates released pursuant to this Order.

5 years, (ii) the violation involved an alleged commission of an Excluded Offense, or (iii) the violation involved failure to comply with a stay-away or no contact order;

- d. Any person currently detained only for civil contempt; and
- e. Any person being held in pre-trial detention who is not being detained on dangerousness grounds pursuant to G.L. c. 276, § 58A and who is either (a) age 60 or older as of the date of this Order or (b) suffers from a high-risk condition as defined by the CDC³ that renders them more vulnerable to the COVID-19 virus.

- 2. For the avoidance of doubt, nothing in this Order shall prohibit any pre-trial detainee or probationer from seeking any individual relief not available to such person under this Order, nor shall such person's ineligibility for relief under this Order be considered as a factor in a court's decision to award relief outside of this Order.

C. Release Review Committee Process

- 1. **The representative(s) from the Trial Court and the District Attorney's office, with assistance from the representatives of the county Sheriff's office, Probation Department, and Department of Correction as necessary to further the interests of justice, shall identify inmates who meet the criteria set forth in this Order and place them into the Release Preview Process within 48 hours or less of the entry of this Order.** The list shall be provided to the representative(s) of the defense bar as soon as it is compiled.
- 2. Notice shall be given to all inmates identified by the Release Review Committee as eligible for review. The representative(s) of the defense bar shall promptly be permitted to convene video or teleconferences with any inmates identified by the Release Review Committee. The county Sheriff's offices and Department of Correction will coordinate with the representative(s) of the defense bar to facilitate such communications.
- 3. **No later than 72 hours after the entry of the Order, the representative(s) from the District Attorney's office, in consultation with the representatives of, where appropriate, the county Sheriff, Probation Department, and Department of Correction, shall identify those inmates whose release the Commonwealth will oppose, and those whose release it will not oppose.**
 - a. The District Attorney's office shall promptly notify the appropriate Primary Trial Court Judge(s) for that county and the representative(s) of the defense

³ People with high-risk conditions are those with chronic lung disease or moderate to severe asthma, serious heart conditions, are immunocompromised (including from cancer treatment), severe obesity, or certain underlying medical conditions such as diabetes, renal failure, and liver disease. *Coronavirus Disease 2019 (COVID-19): People who are at higher risk for severe illness*, CDC (Mar. 26, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

bar as to any objections, and provide the representative(s) of the defense bar and the Primary Trial Court Judge(s) with any materials the District Attorney relied upon in reviewing the files of all inmates whose release the Primary Trial Court Judge(s) will be asked to consider.⁴ The Primary Trial Court Judge(s) may request additional materials to aid in their decision making.

- b. With respect to any inmates for whom the parties agree release is appropriate in a specific county, the parties shall provide the Primary Trial Court Judge(s) with a short statement in support of the release of the agreed upon group of inmates. The Primary Trial Court Judge(s) shall expeditiously act on the recommendation of the District Attorney's Office without further hearing, unless the Primary Trial Court Judge(s) deems a hearing to be necessary.
- c. For those inmates whose release it will oppose, the District Attorney's office shall provide to the representative(s) from the defense bar and the Primary Trial Court Judge(s) a brief written opposition stating the grounds for objection⁵.
- d. In the event that release of an individual may compromise an on-going law enforcement investigation for an Excluded Crime, the District Attorney shall present such information *ex parte* to the Primary Trial Court Judge(s) for *in-camera* review.

4. **Within five (5) calendar days of the entry of this Order, the Primary Trial Court Judge(s) will convene an expedited, short-form video or telephonic conference hearing regarding the release of any inmates that the Primary Trial Court Judge(s) has not already ordered released.** The Primary Trial Court Judge(s) shall implement any necessary procedures to give effect to the terms of this Order and shall hear as many cases in each session as is practicable. Evidence shall consist of the case file and testimony to be presented in the form of affidavits to the extent practicable, to obviate the need for live testimony. If necessary to resolve all objections on a particular category of inmates, such hearings may take place over multiple days, including weekends. Inmates' presence at this hearing shall be waived. The Primary Trial Court Judge(s) is encouraged to place a priority on cases in which there is no objection.
- a. The Primary Trial Court Judge(s) shall order an inmate's release (subject to the limitations set forth below) if the judge determines by a preponderance of the evidence, applying the presumptions concerning release described above,

⁴ The case file reviewed by the Primary Trial Court Judge(s) shall include, but is not limited to, the charging documents (criminal complaints or indictments), police report or brief statement of facts, CARI Report, and reasons for bail issued by the judge who presided over arraignment. Counsel for the defendant shall also provide any available information regarding a release plan if the defendant is released.

⁵ In the interest of expediency, the statement need not be lengthy or a formal brief. It need only provide sufficient information to identify the bases of the objection (*e.g.*, inmate has multiple violent prior offenses or inmate cannot return to his community because his wife/partner has an active abuse prevention order against him).

that an inmate's release is appropriate in order to further the public health goals of limiting density, improving opportunities for social distancing, and managing care, and does not otherwise pose an unreasonable risk to public safety in the circumstances. In making this determination, the Primary Trial Court Judge(s) shall consider whether there exists any credible concern of domestic violence, and shall weigh any such concern against release.

- b. The Probation Department, with input and assistance from counsel for the inmate, shall recommend appropriate conditions of release for any inmates released through the Release Review Process and shall oversee compliance with any conditions of release. The Primary Trial Court Judge(s) shall adopt or modify the conditions recommended by the Probation Department.
 - c. The period during which a person is released pursuant to the Release Review Process is considered an excluded period under Mass. R. Crim. P. 36.
5. If an inmate, who is released through the Review Release Process violates the conditions of their release, it will be treated as an Abuse of Furlough under 103 CMR § 463.17 and the matter will be referred to Probation who will take such action and make such recommendation to the Primary Trial Court Judge(s) as they deem appropriate.
 6. Within 14 calendar days after the COVID-19 State of Emergency has been lifted in the Commonwealth, the Primary Trial Court Judge(s) will hold a hearing for further review of any inmate released.

D. Appeals of Release Review Committee Decisions

1. The order of the Designated Primary Trial Court Judge(s) may be appealed on an emergency basis in a summary manner to a Single Justice of the Supreme Judicial Court. A notice of appeal in any such case must be filed within two business days of the entry of the order with the clerk of the trial court issuing the order, with a copy filed with the clerk of the Supreme Judicial Court for Suffolk County.
 - a. Should a release order be appealed, the release order shall be stayed pending expedited review by the Single Justice of the Supreme Judicial Court.
2. The record on appeal shall consist of any materials and information reviewed by the Primary Trial Court Judge(s) in issuing the order.

E. Exceptions to Release

1. In the following circumstances, an inmate subject to this Order shall not be released, absent further instructions from the Primary Trial Court Judge(s) for that county:
 - a. For any inmate subject to this Order who has tested positive for COVID-19 or has been identified as presumptively positive for COVID-19, the facility in which the

inmate is housed shall immediately notify the parties, and the county health department of the inmate's medical condition, and shall not release the inmate without further instructions from the Primary Trial Court Judge(s) for that county. In such cases, the parties shall immediately confer with the assigned infectious disease expert to ensure an appropriate plan is in place for isolating the inmate and ensuring the inmate's medical treatment and/or mandatory self-quarantine.

- b. For any inmate subject to this Order who notifies the superintendent of the facility where he or she is being detained that he or she does not wish to be released from detention pursuant to this Order because of housing, health, or safety concerns, the superintendent shall immediately notify the Committee of the inmate's wishes, provide a written statement from the inmate to that effect, and provide an opportunity for the inmate to confer with the defense bar representative on the Release Review Committee. If the inmate maintains that he or she does not want to be released, the superintendent shall not release the inmate without further instructions from the Primary Trial Court Judge(s) for that county.

F. Release Review Process Evaluation

- 1. The Special Master, within seven (7) calendar days after the entry of this Order, shall convene a working group to assess the Release Review Process and make any necessary adjustments to ensure the process is meeting the stated goals of responding to the COVID-19 State of Emergency.**

III. CONVICTED AND SENTENCED INMATES AND PROBATIONERS

1. While the COVID-19 State of Emergency remains in effect, Mass. R. Crim. P. 29 is hereby modified to allow the following categories of convicted and sentenced inmates to seek emergency relief regarding revision or revocation of their sentences, regardless of the time restrictions set forth in Rule 29, on an expedited basis from the Trial Courts:
 - a. Pre-release inmates at "minimum security facilities" with release plans in place;
 - i. For the purposes of this Order, "minimum security facilities" are those defined by the Massachusetts Department of Correction as facilities that contain inmates "who do not pose a significant risk to security and have demonstrated a willingness to comply with the rules and are afforded greater autonomy."⁶
 - b. Inmates who have been approved for parole, but have not yet been released;
 - c. Inmates who are within 60 calendar days of their release date excluding inmates who are serving minimum mandatory sentences; and

⁶ See Massachusetts Department of Correction, *Prison Security Levels* (Online at <https://www.mass.gov/service-details/prison-security-levels>).

- d. Inmates who were convicted for an offense other than an Excluded Offense; provided that inmates who are serving a minimum mandatory sentence shall not be eligible to seek emergency relief under this provision.
2. The Primary Trial Court Judge(s) in each county who are dedicated to the Release Review Process pursuant to Section II.A above shall hear such emergency Rule 29 motions on an expedited basis, and such motions shall be considered “emergency matters” under District Court Standing Order 2-20, Superior Court Standing Order 3-20, and Juvenile Court Standing Order 1-20.
3. In evaluating whether to grant relief pursuant to an expedited Rule 29 motion, the Primary Trial Court Judge may consider, in weighing the interests of justice, the risk that an inmate may either contract COVID-19 or infect others as a factor in determining if the release is appropriate.
4. The Primary Trial Court Judge(s) shall order an inmate’s release if the judge determines by a preponderance of the evidence that an inmate’s release is appropriate in order to further the public health goals of limiting density, improving opportunities for social distancing, and managing care, and does not otherwise pose an unreasonable risk to public safety in the circumstances. If the Primary Trial Court Judge determines release is appropriate, the judge shall order relief consistent with addressing the current public health crisis, such as a stay of the inmate’s sentence until fourteen (14) days after the COVID-19 State of Emergency is lifted in the Commonwealth. If an inmate has more than 180 calendar days left on his sentence, the Primary Court Trial Judge shall order that the inmate return to custody within fourteen (14) days after the COVID-19 State of Emergency is lifted in the Commonwealth. In making this determination, the Primary Trial Court Judge(s) shall consider whether there exists any credible concern of domestic violence, and shall weigh any such concern against release.
5. For the avoidance of doubt, nothing in this Order shall prohibit any convicted or sentenced inmate from seeking any individual relief not available to such person under this Order, nor shall such person’s ineligibility for relief under this Order be considered as a factor in a court’s decision to award relief outside of this Order.

IV. RIGHTS OF VICTIMS

1. Nothing in this order suspends the obligations of District Attorneys and other law enforcement agencies to share information with crime victims pursuant to G.L. c. 258B. Each county’s District Attorney’s office, in connection with local law enforcement, shall, to the fullest extent practicable under the circumstances, provide notice to victims of the accelerated release of inmates under this order.
 - a. When contact with a victim cannot be made for any reason, to help ensure the victim’s safety, the prosecutor shall notify the police department in the town of the victim’s last known residence of the inmate’s accelerated release.

2. However, especially in light of the public health emergency posed by COVID-19, the inability of the Commonwealth to provide the type of notice called for by the statute shall not be grounds for the continued detention of an inmate otherwise entitled to release under this Order.⁷

V. REPORTING BY PRISONS AND JAILS

1. In order to effectuate the purposes of this Order and the underlying public health goals, this Court requests that while the COVID-19 State of Emergency remains in effect, each institution in Massachusetts holding detained, committed, or imprisoned persons provide to the Attorney General's Office and the Special Master on each Tuesday and Friday by 5PM:
 - a. Overall inmate population;
 - b. Number of COVID-19 tests and number of positive results for all inmates, correctional officers, or other staff members, including contactors;
 - c. Measures being taken to treat and isolate persons who have either tested positive or are symptomatic;
 - d. Other measures being taken to prevent the spread of COVID-19;
 - e. Availability of COVID-19 test kits, nasal swabs, thermometers, masks and gloves; and
 - f. Number of inmates released pursuant to the procedures set forth in this Order.
2. The Court recommends that each correctional facility consult with an infectious disease and/or public health expert to evaluate the facility's ability to abide by the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities⁸ and make recommendations, as necessary.

/s/ Brien T. O'Connor
Special Master Brien T. O'Connor
Ropes & Gray LLP

⁷ Cf. *In the Matter of Chapman*, 482 Mass. 1012, 1017 (2019) (“Nothing in G.L. c. 258B suggests that the remedy for a failure to provide any of the various types of notice called for by the statute is to keep an individual in custody who is otherwise entitled to release.”).

⁸ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

APPENDIX A

For purposes of this Order, the following are considered an “Excluded Offense”:

i) Violent crimes as defined in G. L. c. 140, § 121:

- a. “Any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.”

ii) Sexual offenses defined as any offense for which a convicted individual would have to register as a sex offender in accordance with G.L. c. 6, § 178C-Q or for which the individual is subject to civil commitment as a sexually dangerous person under G.L. c. 123A:

- a. G.L. c. 6, § 178C defines “Sex offender”, in relevant part, as a person who resides, has secondary addresses, works or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the department of youth services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under section 14 of chapter 123A, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981.
- b. “Sex offense” includes:
1. an indecent assault and battery on a child under 14 under G.L. c. 265, § 13B;
 2. aggravated indecent assault and battery on a child under the age of 14 under G.L. c. 265, § 13B ½;
 3. a repeat offense under G.L. c. 265, § 13B ¾;
 4. indecent assault and battery on a mentally retarded person under G.L. c. 265, § 13F;
 5. indecent assault and battery on a person age 14 or over under G.L. c. 265, § 13H;
 6. rape under G.L. c. 265, § 22;
 7. rape of a child under 16 with force under G.L. c. 265, § 22A;
 8. aggravated rape of a child under 16 with force under G.L. c. 265, § 22B;
 9. a repeat offense under G.L. c. 265, § 22C;
 10. rape and abuse of a child under G.L. c. 265, § 23;
 11. aggravated rape and abuse of a child under G.L. c. 265, § 23A;
 12. a repeat offense under G.L. c. 265, § 23B;
 13. assault with intent to commit rape under G.L. c. 265, § 24;

14. assault of a child with intent to commit rape under G.L. c. 265, § 24B;
 15. kidnapping of a child under G.L. c. 265, § 26;
 16. enticing a child under the age of 16 for the purposes of committing a crime under G.L. c. 265, § 26C;
 17. enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under G.L. c. 265, § 26D;
 18. trafficking of persons for sexual servitude under G.L. c. 265, § 50;
 19. a second or subsequent violation of human trafficking for sexual servitude under G.L. c. 265, § 52;
 20. enticing away a person for prostitution or sexual intercourse under G.L. c. 272, § 2;
 21. drugging persons for sexual intercourse under G.L. c. 272, § 3;
 22. inducing a minor into prostitution under G.L. c. 272, § 4A;
 23. living off or sharing earnings of a minor prostitute under G.L. c. 272, § 4B;
 24. second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior under G.L. c. 272, § 16, but excluding a first or single adjudication as a delinquent juvenile before August 1, 1992;
 25. incestuous marriage or intercourse under G.L. c. 272, § 17;
 26. disseminating to a minor matter harmful to a minor under G.L. c. 272, § 28;
 27. posing or exhibiting a child in a state of nudity under G.L. c. 272, § 29A;
 28. dissemination of visual material of a child in a state of nudity or sexual conduct under G.L. c. 272, § 29B;
 29. possession of child pornography under G.L. c. 272, § 29C;
 30. unnatural and lascivious acts with a child under 16 under G.L. c. 272, § 35A;
 31. engaging in sexual contact with an animal under G.L. c. 272, § 77C;
 32. aggravated rape under G.L. c. 277, § 39; and
 33. any attempt to commit a violation of any of the aforementioned sections pursuant to G.L. c. 274, § 6 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.
- c. G.L. c. 123A § 12 provides that the Commonwealth may petition the court to have a “sexually dangerous person” civilly committed.
- d. G.L. c. 123A § 1 defines a “Sexually dangerous person” as any person who has been:
1. convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility;
 2. charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality

disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or

3. (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

iii) All offenses involving a firearm.

iv) All violations of abuse prevention orders issued pursuant to G.L. c. 209A.

v) All violations of harassment prevention orders issued pursuant to G.L. c. 258E.

vi) **Any offense listed in G.L. c. 276, § 58A:**

a. The following offenses are considered predicate offenses under G.L. c. 276, § 58A:

1. A felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another;
2. Violation of an order protecting the personal liberty of a spouse or an order for a spouse to vacate the marital home (G.L. c. 208, §§ 18, 34B, 34C; G.L. c. 209, § 3);
3. Violation of an abuse prevention order pursuant to G.L. c. 209A, §§ 3, 4, 5 or an order related to the protection of children under G.L. c. 209C, §§ 15, 20;
4. Individuals who were arrested and charged with a misdemeanor or felony involving abuse as defined in G.L. c. 209A, § 1 or while an order of protection issued under said chapter 209A was in effect against such person
 - (1) G.L. c. 209A, § 1 defines “Abuse” as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat or duress.”;
5. An offense for which a mandatory minimum term of 3 years or more is prescribed in the Controlled Substances Act (G.L. c. 94C);
6. Individuals who were arrested and charged with the intimidation of witnesses, jurors or persons furnishing information in connection with criminal proceedings (G.L. c. 268, § 13B);

7. Individuals who were arrested and charged with a third or subsequent violation of driving under the influence (G.L. c. 90, § 24) within 10 years of the previous conviction for such violation;
8. Individuals who were convicted of a violent crime as defined in G.L. c. 140, § 121 for which a term of imprisonment was served and subsequently arrested and charged with a second or subsequent offense of felony possession of a weapon or machine gun as defined in G.L. c. 140, § 121;
9. Individuals who were arrested and charged with a violation of certain provisions of G.L. c. 269, § 10 (carrying a dangerous weapon);
10. Individuals who were arrested and charged with the willful and malicious killing, maiming, disfigurement, or poisoning of animals of another (G.L. c. 266, § 112);
11. Individuals who were arrested and charged with cruelty to animals or animal fighting (G.L. c. 272, §§ 77, 94).

vii) Any felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another.

viii) Any offense pursuant to G.L. c. 265, § 13M:

- a. G.L. c. 265, § 13M prohibits the assault or assault and battery on a family or household member.

ix) Homicide or manslaughter by motor vehicle:

- a. G.L. c. 90, § 24G prohibits homicide by motor vehicle;
- b. G.L. c. 265 § 13 ½ prohibits manslaughter by motor vehicle.

x) All attempts, conspiracies, or accessories after the fact of the aforementioned offenses.