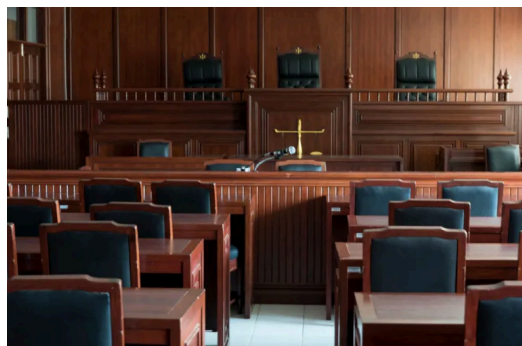


Massachusetts 'Show Cause' Hearings

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What is a 'Show Cause' Hearing?

Massachusetts enacted clerk-magistrate hearings — also called “show cause” hearings — in 1943 “for the protection and benefit” of the accused person. [*Victory*](#)



Distribs. v. Ayer Div. of the Dist. Court Dep't <
<http://masscases.com/cases/sjc/435/435mass136.html>>, 435
Mass. 136, 142 (Mass. 2001).

Most criminal prosecutions begin with an arrest, followed by an application for a criminal complaint by a law enforcement officer. A law enforcement officer or private citizen, however, can also file an application for issuance of a criminal complaint without the occurrence of an arrest. Applications without arrests can be subject to a “show cause” hearing when there is no threat of imminent bodily injury, the commission of a crime, or of the accused fleeing the state. *M.G.L. ch. 218, § 35A* <
<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter218/Section35a>>.

The hearings’ official legal function is to determine whether there is probable cause to issue a charge, but its implicit function — according to the Massachusetts Supreme Judicial Court — is to screen minor criminal matters. *Eagle-Tribune Publ’g Co. v. Clerk-Magistrate of the Lawrence Div. of the Dist. Court Dep’t* <
<http://masscases.com/cases/sjc/448/448mass647.html>>, 448
Mass. 647, 650 (Mass. 2007).

To protect the accused from unwanted publicity, show cause hearings attendance and records are not generally available to the public. *Bos. Globe Media Partners, LLC v. Chief Justice of the Trial Court* <

<https://law.justia.com/cases/massachusetts/supreme-court/2019/sjc-12681.html>, 483 Mass. 80, 95 (Mass. 2019).

What kinds of cases may be heard?

Although show cause hearings have the implicit function of screening out minor criminal matters, clerk-magistrates have the authority to hold the hearings for felony, as well as misdemeanor, criminal complaints in certain instances. [*Commonwealth v. Clerk-Magistrate*, 439 Mass. 352 \(Mass. 2003\)](#) <<https://casetext.com/case/commonwealth-v-clerk-magistrate>>.

When the accused is not under arrest, the clerk-magistrate must hold a show cause hearing for a felony complaint when the law enforcement officer who submitted the complaint requests a hearing. Additionally, if the police complainant does not request a show cause hearing for a felony complaint, then the magistrate has discretion to hold a show cause hearing if the complainant does not object. If a private citizen submitted the felony complaint, then the magistrate may choose to hold a show cause hearing. [*M.G.L. ch. 218, § 35A*](#) <<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter218/Section35a>>. The Massachusetts District Court complaint standards deem it “preferable” to allow the accused to be heard before deciding on a felony application received from a private citizen. [*District Court Standards of Judicial Practice, The Complaint Procedure, Page 32*](#) <

<https://www.mass.gov/doc/district-court-standards-of-judicial-practice-the-complaint-procedure/download>.

The number of felony complaints heard at a show cause hearing is significant. According to an [investigation < https://apps.bostonglobe.com/spotlight/secret-courts/](https://apps.bostonglobe.com/spotlight/secret-courts/) by The Boston Globe, in the second half of 2017 one in eight show cause hearings involved a felony complaint against the accused.

Inside the secret courts of Massachusetts | Spotlight Investig...



The Boston Globe's Spotlight Team investigated secret clerk magistrate hearings in 2018. Reporters found that the quality of justice can depend on where you live and who you know. No other state has anything like them. Read the [investigation < https://apps.bostonglobe.com/spotlight/secret-courts/](https://apps.bostonglobe.com/spotlight/secret-courts/).

Why are these hearings problematic?

According to The Boston Globe's 2018 investigation and state records:

- No other state has anything similar to the show cause hearing process. In all other states, initial criminal hearings are generally available to the public with few exceptions.
- Because the hearing schedules are not publicly posted, it can be difficult to know where and when they occur. Court staff may deny requests for information on a hearing or a party to the hearing.
- Massachusetts held **186,983 criminal show cause hearings** < <https://www.mass.gov/doc/year-end-summary-of-all-court-activity-4/download> > throughout 2016 and 2017. The presiding clerk did not issue a charge in around 62,000 of those cases. In that time, Massachusetts clerks set aside over 18,000 cases even after the clerk concluded there was probable cause.
- Show cause hearings are presided over by clerk-magistrates, a position that does not require a law degree. As of 2017, 40 percent of clerks and their assistants did not have law degrees.
- In 2017, for every 100 criminal cases begun in court, there were 46 show cause hearings.

- One in eight show cause hearings were for felony complaints in 2017.
- There are vast disparities between jurisdictions:
 - Percentage of show cause hearings that resulted in probable cause in District Court in 2016 and 2017: Between 92.2 percent (East Brookfield Division) and 21.6 percent (Chelsea Division).
 - Where probable cause was found but no criminal complaint issued in District Court in 2016 and 2017: Between 43.0 percent (Gloucester Division) and 0.2 percent (Chelsea Division).
- In the second half of 2017, white defendants had a higher chance of being let off (49 percent) than non-whites (44 percent). This disparity is greater in some jurisdictions. In the second half of 2017, in Brookline District Court, 80 percent of white accused persons were not charged while only 45 percent of those who are not white were let off.

What do the courts have to say?

In 2007, the Massachusetts Supreme Judicial Court ruled that there is no First Amendment right to public access of a show cause hearing. The court reasoned that show cause hearings are more akin to the private court proceedings of grand juries, ex parte hearings, and court-facilitated mediations, rather than public trials.

Additionally, because the purpose of show cause hearings is to benefit the accused, the court reasoned that public access should be denied because it would not aid the hearings' function. Nevertheless, the clerk-magistrate presiding over the hearing may provide public access in particular circumstances. Specifically, if there is special public significance that outweighs the right to privacy or when an incident has already attracted public attention, the clerk-magistrate may allow public access. However, the accused being a public official or otherwise well-known individual is not sufficient to make the show cause hearing public. *Eagle-Tribune Publ'g Co. v. Clerk-Magistrate of the Lawrence Div. of the Dist. Court Dep't* <
<http://masscases.com/cases/sjc/448/448mass647.html>>, 448 Mass. 647, 650 (Mass. 2007).

In 2019, The Boston Globe sought to make show cause hearing records available to the public in instances where the clerk-magistrate determines there is probable cause but refuses to issue a criminal complaint. At the time the Supreme Judicial Court decided this case, Massachusetts clerk-magistrates found probable cause but declined to issue a complaint against the accused about 9,000 times per year. Although the court acknowledged that the public could benefit from knowing why certain show cause hearings were decided, the court held that the subset of hearings the Globe sought are not presumptively public. The court did, however, order some changes in the interest of public access. First, it ruled that all show cause hearings must now be electronically recorded. These recordings are kept in a separate location from other court records and destroyed after one year. Any member of

the public may request these show cause hearing records, which the clerk-magistrate or a judge may grant when “justice requires.” Second, the court ordered that trial courts must develop informational compilations about show cause hearings which do not reveal the identity of the accused. These compilations must be made available upon request and published periodically. [*Bos. Globe Media Partners, LLC v. Chief Justice of the Trial Court*](#) <
<https://law.justia.com/cases/massachusetts/supreme-court/2019/sjc-12681.html>>, 483 Mass. 80, 95 (Mass. 2019).

How has the legislature addressed these courts?

In January 2019, Rep. Antonio F. D. Cabral and Sen. Bruce E. Tarr introduced [*H.1366*](#) <

<https://malegislature.gov/Bills/191/HD2790>>, *An Act Relative to Transparency in Clerk Magistrate Hearings*, which would amend [*ALM GL ch. 218, §.35A*](#) <
<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter218/Section35a>> to make show cause hearings presumptively public rather than private and ensure that all show cause hearings are “taken stenographically or recorded and transcribed.”

Sen. Jason M. Lewis presented [*S.972*](#) <
<https://malegislature.gov/Bills/191/SD384>>, *An Act to Provide for the Improvement of Required Standards of Clerk Magistrates*, the same year. This bill would require all future clerk magistrates to

have a law degree and would provide incentives for current clerk magistrates to obtain one. In addition, the bill would require yearly training created and monitored by the Attorney General for Clerk Magistrates.

Reps. Cabral, Christopher Hendricks, and Michelle M. DuBois petitioned for [H.1474](#) <

<https://malegislature.gov/Bills/192/H1474/BillHistory>>

, *An Act Relative to Transparency in Clerk Magistrate Hearings*, in March 2021. This bill contains the same language as H.1366. The effect of the recording provision would be to codify the requirement into law, because recording show cause hearings is already mandated through court order as a result of the 2019

[*Boston Globe*](#) <

<https://law.justia.com/cases/massachusetts/supreme-court/2019/sjc-12681.html>> case.

All three of these bills were given a “[study order](#) <

<https://www.masslegalservices.org/content/legislative-process-massachusetts-o>>” by either the House or the Senate

with no other action taken and essentially “killed.”

How can a show cause hearing be opened to the public?

Here is a [step-by-step guide](#) <

<https://www.nefac.org/accessing-show-cause-hearings-if-requesting-pro-se>> which can be used to request access to

secret show cause hearings if requesting pro se (without legal

representation). This guide is provided by journalist Anastasia Lennon of the New Bedford Light and is based on her experience requesting access to two show cause hearings in Southeastern Massachusetts district courts. *Please note that this is intended as general guidance and should not be considered legal advice.*

Secret Courts in Massachusetts



Anastasia Lennon, a reporter for the New Bedford Light, discusses her attempts to access a criminal court proceeding that's closed to the public. Secret "show cause" hearings occur throughout the state typically with no notice to the public. Massachusetts is the only state in the country where these types of hearings occur.

When has public access been requested?

NEFAC is keeping a log of all attempts to open show cause hearings and whether or not they were opened to the public. If you are aware of a case not listed below, please email the request and court order to justin@nefac.org.

[Criminal Complaints Against New Bedford City Council](https://www.nefac.org/wp-content/uploads/2024/02/new-bedford-light.pdf)
 [< https://www.nefac.org/wp-content/uploads/2024/02/new-bedford-light.pdf > | \(Jan. 30, 2024\)](https://www.nefac.org/wp-content/uploads/2024/02/new-bedford-light.pdf)

Third District Court in New Bedford | Magistrate Peter J. Thomas | **Denied**

[Criminal Complaints Against Alleged Sex Buyers in Sex Ring Prosecution](https://www.nefac.org/wp-content/uploads/2023/12/wbur-motion-for-access.pdf)
 [< https://www.nefac.org/wp-content/uploads/2023/12/wbur-motion-for-access.pdf > \(Dec. 21, 2023\)](https://www.nefac.org/wp-content/uploads/2023/12/wbur-motion-for-access.pdf)

Cambridge District Court | Magistrate Sharon Shelfer Casey | **Allowed**

[Nantucket Environmental Police v. Mark Wolpow](https://www.nefac.org/wp-content/uploads/2023/01/Wolpow-request-for-recording.pdf)
 [< https://www.nefac.org/wp-content/uploads/2023/01/Wolpow-request-for-recording.pdf > \(2022\)](https://www.nefac.org/wp-content/uploads/2023/01/Wolpow-request-for-recording.pdf)

Nantucket District Court | Magistrate Donald P. Hart | **Denied**

[Commonwealth v. Gomes](https://www.nbcboston.com/investigations/ex-brockton-commonwealth-v-gomes)
 [< https://www.nbcboston.com/investigations/ex-brockton-](https://www.nbcboston.com/investigations/ex-brockton-commonwealth-v-gomes)

[*police-chiefs-criminal-hearing-opened-to-public/2773867/>*](#) (July 18, 2022)

Wrentham District Court | Magistrate Michelle Kelley |

Allowed

[*Rochester Police v. Keith Hovan <https://www.nefac.org/wp-content/uploads/2022/07/SJ-2022-0009_P009_Memorandum_of_Decision_and_Judgment.pdf>*](#) (Jan. 14, 2022)

Wareham District Court | Magistrate Daryl G. Manchester |

Denied

[*Commonwealth v. Hugh Dunn <https://www.southcoasttoday.com/story/news/courts/2021/09/29/fall-river-clerk-bears-testimony-possible-charges-against-hugh-dunn/5901132001/>*](#) (Sept. 28, 2021)

Fall River District Court | Magistrate John O'Neil | **Allowed**

[*Commonwealth v. Coughlin <https://www.bostonherald.com/2021/07/16/retired-massachusetts-state-police-captain-faces-day-in-court-over-pool-party-fatality/>*](#) (July 21, 2021)

Dedham District Court | Magistrate Salvatore Paterna |

Allowed

[*Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court <https://law.justia.com/cases/massachusetts/supreme-*](#)

[court/2019/sjc-12681.html](http://www.mass.gov/judicial/court/2019/sjc-12681.html)> (Sept. 9, 2019)

District Court Department and Boston Municipal Court
Department | **Denied**

*Eagle-Tribune Publishing Company v. Clerk-Magistrate
of the Lawrence Division of the District Court
Department <*

<http://masscases.com/cases/sjc/448/448mass647.html>>
(Mar. 28, 2007)

Lawrence District Court | Magistrate Maria Abascal | **Denied**

What data have the courts released about the hearings?

*Pursuant to the order in the 2019 [Boston Globe <
\[https://law.justia.com/cases/massachusetts/supreme-
court/2019/sjc-12681.html\]\(https://law.justia.com/cases/massachusetts/supreme-court/2019/sjc-12681.html\)>](https://www.boston.com/news/local/massachusetts/2019/09/09/show-cause-hearings/) case, trial courts must develop
informational compilations about show cause hearings. These compilations
must be made available upon request and published periodically. Here is
that data for the years available:*

2019 | [2020-2022 <
\[https://public.tableau.com/app/profile/drap4687/viz/M
assachusettsTrialCourtShowCauseHearingDecisions/
ByCaseCharateristics\]\(https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtShowCauseHearingDecisions/ByCaseCharateristics\)>](https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtShowCauseHearingDecisions/ByCaseCharateristics) | 2023 | 2024



NEFAC Executive Director Justin Silverman speaks to NBC10 Boston about a Pembroke, Mass., police officer who caused a serious car crash just to have the case quietly dismissed behind closed doors.

Other resources and helpful press coverage:

- [City Councilors' Dispute with Vocal Critics Escalates to Court Hearing, New Bedford Light \(Feb. 1, 2024\)](https://newbedfordlight.org/city-councilors-dispute-with-vocal-critics-escalates-to-court-hearing/) < <https://newbedfordlight.org/city-councilors-dispute-with-vocal-critics-escalates-to-court-hearing/> > .
- [NEFAC, MNPA to Mass. High Court: More Transparency Needed in Cambridge Brothel Case \(Jan. 22, 2024\)](https://www.nefac.org/news/nefac-mnpa-to-mass-high-court-more-transparency-needed-in-cambridge-brothel-case/) < <https://www.nefac.org/news/nefac-mnpa-to-mass-high-court-more-transparency-needed-in-cambridge-brothel-case/> > .

- [Court Hearings to Be Open as Feds Seek Charges Against Clients in Mass. Brothel Bust Case, NBC Boston \(Dec. 21, 2023\)](https://www.nbcboston.com/news/local/court-hearings-to-be-open-as-feds-seek-charges-against-clients-in-mass-brothel-bust-case/3226338/) < <https://www.nbcboston.com/news/local/court-hearings-to-be-open-as-feds-seek-charges-against-clients-in-mass-brothel-bust-case/3226338/>> .
- [Private Equity CEO Won't Face Charges In Old North Wharf Boat Sabotage Case, Nantucket Current \(Jan. 6, 2023\)](https://www.nantucketcurrent.com/private-equity-ceo-won-t-face-charges-in-old-north-wharf-boat-sabotage-case/) < https://www.nantucketcurrent.com/private-equity-ceo-won-t-face-charges-in-old-north-wharf-boat-sabotage-case>
- [Revised Standards on the Complaint Procedure \(Sept. 10, 2008 Memorandum, Pages 18-67\)](https://www.nefac.org/wp-content/uploads/2022/07/trans998revised-complaint-standards.pdf). Note: See [table of contents for specific show cause hearing procedures](https://www.nefac.org/wp-content/uploads/2022/07/trans998revised-complaint-standards.pdf) < <https://www.nefac.org/wp-content/uploads/2022/07/trans998revised-complaint-standards.pdf>> .
- [Suspects Aren't Entitled to a Lawyer at Clerk's Hearings in Mass. But Having One Makes a Huge Difference, WBUR \(May 28, 2022\)](https://www.wbur.org/news/2022/05/28/suspects-arent-entitled-to-a-lawyer-at-clerks-hearings-in-mass-but-having-one-makes-a-huge-difference) < <https://www.wbur.org/news/2022/05/28/suspects-arent-entitled-to-a-lawyer-at-clerks-hearings-in-mass-but-having-one-makes-a-huge-difference>>
- [Son of Top Massachusetts State Police Col. Faces Court Hearing, Possible Gun Charge, Boston Herald \(May 10,](#)

[2022\)](#) <

<https://www.bostonherald.com/2022/05/09/cape-cod-court-to-hold-closed-hearing-over-son-of-state-police-colonel/>>

• [Rep. Antonio Cabral: My Bill Would Bring Transparency to Show Cause Hearings, The New Bedford Light \(Jan. 26, 2022\)](#) <
<https://newbedfordlight.org/commentary-my-bill-would-bring-transparency-to-show-cause-hearings/>>

• [SJC Justice Denies The Light's Appeal to Open Keith Hovan Hearing, The New Bedford Light \(Jan. 14, 2022\)](#) < <https://newbedfordlight.org/sjc-justice-denies-the-lights-appeal-to-open-keith-hovan-hearing/>>

• [Inside Our Secret Courts, The Boston Globe \(Sept. 30, 2018\)](#) < <https://apps.bostonglobe.com/spotlight/secret-courts/>>

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<https://www.nefac.org/>>

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