

DISTRICT COURT STANDING ORDER 1-21: INVENTORY AND PRIORITIZATION OF JURY TRIAL-READY CRIMINAL CASES

Pursuant to the Trial Court's 90-day operational plan, each court department and division is required to: 1) initiate a jury trial readiness inventory to determine the number of cases awaiting a jury trial; and 2) develop a plan to prioritize cases for jury trial once the trial court resumes jury trials. In accordance with this plan, the purpose of this Order is to: 1) designate the inventory process that shall be used to determine the number of criminal cases that are jury trial-ready; and 2) designate the District Court's jury trial priority plan by which courts shall prioritize the scheduling of jury trials for criminal cases once jury trial dates become available.

1. Trial Readiness Process

All criminal cases presently scheduled for a jury trial or that are awaiting the availability of a jury trial shall be scheduled for a trial readiness conference (TRC) in the court in which the charges are pending, the purpose of which shall be to identify cases that are jury trial-ready. TRCs shall be conducted virtually unless the judge assigned to preside over the session determines that conducting a TRC virtually is impracticable. Jury trial-ready shall mean those cases in which the court has: (1) confirmed that the case will be a jury trial; (2) addressed and resolved all pre-trial evidentiary matters, including motions to dismiss and motions to suppress; (3) confirmed that discovery is complete; (4) engaged the parties in discussions regarding the potential for resolution or for a jury-waived trial; and (5) ensured counsel and witnesses are ready and available to proceed and addressed the need for interpreters, any particular witness concerns, and any other logistical requirements for trial.

If, at the conclusion of the TRC, the judge assigned to preside over the conference determines that a case is jury-trial ready, the clerk shall enter the following MassCourts event result codes:

If a custody case: "Held-JT Assign-Covid-Custody"

If a non-custody case: "Held-JT Assign-Covid-Non-Custody"

If the judge determines that a case is not jury-trial ready, it shall be scheduled for the next necessary event.

2. Prioritization

The first justice or designee of the court holding a jury trial session shall be responsible for ordering jury-trial ready cases to be scheduled for trial once jury trial dates become available. Once the inventory has been completed, and once trial dates become available¹, the judge assigned to set trial dates in the court holding a jury trial session shall schedule jury-trial ready cases for trial according to the following priorities:

¹ Persons in custody whose cases have been determined to be jury-trial ready shall be brought back before the court every 30 days as required by G.L. c. 276, § 35.

- A. Case where a defendant is in custody pursuant to G.L. c. 276, §§ 58A and 58B²;
- B. Cases that must be expedited pursuant to G.L. c. 278, § 16F³;
- C. All other custody cases⁴;
- D. Defendants whose pretrial liberty is reasonably believed to present unusual risks⁵;
- E. Cases in which there is an alleged victim and the defendant is charged with an offense under G.L. c. 209A or 265, and cases in which the defendant is charged with an offense under G.L. c. 90 that is alleged to have caused death or serious bodily injury;
- F. All other criminal cases.

To determine the priority within these categories, the following factors should be considered:

- i. The seriousness of the offense charged;
- ii. Whether and for how long the defendant has been in custody;
- iii. The age of the case;
- 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 an alleged victim or necessary witness;
- vi. Whether any alleged victim or necessary witness is expected to become unavailable due to illness, military deployment, or other unavoidable reason;
- vii. 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;
- viii. The length of the trial.

If presented with compelling, significant circumstances, the judge assigned to set trial dates may, in their discretion, schedule a case for a jury trial that may not otherwise be prioritized for trial.

A forthcoming District Court standing order will be issued to separately identify the inventory and prioritization process for civil jury trials.

² See G.L. c. 276, § 58A (“A person detained under this subsection shall be brought to a trial as soon as reasonably possible”); G.L. c. 276, § 58B (“A person detained under this subsection, shall be brought to trial as soon as reasonably possible”).

³ See G.L. c. 278, § 16F (“In any criminal proceeding involving an alleged sex crime perpetrated upon a minor child, or in which a minor child is expected to testify as a witness to a sex crime, the court shall, in order to minimize stress on such child, take action to expedite trial and give precedence to the case over any other case”).

⁴ “The trial of defendants in custody awaiting trial . . . shall be given preference over other criminal cases.” Mass. R. Crim. P. 36(a)(1).

⁵ “The trial of defendants . . . whose pretrial liberty is reasonably believed to present unusual risks to society shall be given preference over other criminal cases”. Mass. R. Crim. P. 36(a)(1).

This Order will remain in effect until a subsequent order issues rescinding this Order.
Any other deviation from this Order must be sought from the Chief Justice of the District Court.

/s/ Paul C. Dawley

Hon. Paul C. Dawley
Chief Justice of the District Court
Promulgated: March 1, 2020