

ESSEX COUNTY SUPERIOR COURT
CRIMINAL CASE PROCEDURES AND PROTOCOLS

I. GENERAL MATTERS

Essex County Superior Court has four full-time permanent criminal sessions, three of which are criminal trial sessions. Two criminal trial sessions sit in Salem, while the third sits in Lawrence. The fourth criminal session is First Session, always located in Courtroom K in the Salem Courthouse.

All criminal cases are handled in First Session until they are ready to be assigned to a criminal trial session for trial. Starting with arraignments, criminal cases will be called in First Session, dealt with, and given a next date (without fail). No case leaves First Session without a next date. All scheduling, with only occasional exceptions, will take place in First Session. The next scheduled date will always be in First Session, with the exception of evidentiary motion hearings and trials. Trials will be scheduled by First Session for a particular date, but are later assigned to a criminal trial session (in Salem or Lawrence) for the actual trial. Evidentiary motions will be scheduled for a particular date by First Session, but are later assigned to a criminal trial session (in Salem or Lawrence) for the actual motion hearing. Criminal trial sessions conduct trials on a 9:00-1:00 schedule, with cases going into the afternoon session as needed to complete impanelment, occasionally to

accommodate witnesses, and to conclude evidence, close, charge and deliberate at the end of trial. In that way, criminal trial sessions are often available for evidentiary motions in the afternoons.

Once a trial date is set, but before a case is assigned to a particular criminal trial session, all requests to continue a trial date are heard in First Session. All motions to continue trial dates, as required by rule, must be in writing. The court does not have a firm limit on the number of trials scheduled for any particular week. Most criminal cases are scheduled for trial on Monday or Tuesday.

The court does limit the number of evidentiary hearings on any one day in an effort to have an available session for every assigned evidentiary motion. As with trials, evidentiary motions are scheduled by First Session and later assigned to a particular session for the hearing. Motions to continue evidentiary motions are brought in First Session. Evidentiary motions are usually scheduled for a 9AM call. When a criminal trial session is actively engaged in a trial, counsel with an assigned evidentiary motion hearing should expect a call from the session clerk to schedule commencement of the hearing later in the day. If a session is not on trial, it is the universal desire of judges to start evidentiary motion hearings as early in the day as possible.

By long-standing practice, the Regional Administrative Justice or his/her designee conducts a trial/evidentiary motion assignment conference every Thursday morning at 8:45 for purposes of assigning trials and evidentiary motion hearings for the week beginning 10 days thereafter. At the conferences, the District Attorney's Office reports on the readiness of all scheduled trials and evidentiary motions. CPCS is always represented at the meeting. All defense counsel as well as Assistant AGs with scheduled cases (trials or evidentiary motions) are welcome to attend. Matters such as continuances or new dates are not dealt with, and are reserved for First Session when the case is next scheduled. Ready cases are given a ranked priority by the court, with input from anyone present. Priority is given to murders, child sexual assaults (statutory priority), and crimes of violence. Cases are also prioritized based upon custody status, and age of case. Ready cases are then assigned to available criminal trial sessions (in Salem and Lawrence). Requests for a particular courthouse are welcomed, but cannot always be accommodated. Trial counsel thereafter need to consult with the assistant clerk of the assigned session on any matters relating to the trial of the case. Counsel should expect that a final trial conference will be conducted in the assigned session on the Thursday afternoon prior to the trial date. Cases not reported ready, as well as ready cases for which no trial session is available, will be called in First Session on the scheduled trial date. New trial dates

are scheduled in First Session unless the case is held for trial in the session to which it was assigned.

After assigning trials to available sessions at the Thursday morning assignment conference evidentiary motions, (almost always motions to suppress) are also discussed and assigned to a session in the same manner as trials. The District Attorney's Office reports on the readiness of each scheduled motion hearing. The court will assign evidentiary motion hearings to particular sessions or to a session to be determined (TBD) depending on ongoing trials.

II. FIRST SESSION

First Session sits every work day in Courtroom K in Salem. The session begins at 9:30. The session breaks at 1:00 and resumes at 2:00, if business remains. First Session also handles afternoon plea conferences and some pleas. With the exception of evidentiary motion hearings and trials, First Session handles all criminal cases from arraignment forward. Bail is dealt with at arraignment immediately after the plea is taken. If a § 58A motion to detain the defendant is filed by the Commonwealth, the § 58A hearing can occur immediately if the parties so agree. Usually, the parties propose an agreed-upon date. The § 58A hearing will be held in

First Session unless witness testimony is involved, in which case it may be assigned to a criminal trial session.

After bail is dealt with, a pretrial conference date is requested from the parties. First Session works on a thirty-day rule. Most dates about thirty days out are still available for scheduling. First Session limits the number of cases assigned for any particular day, so sometimes counsel have to suggest more than one agreed-upon date for the next appearance. The court will accept agreed-upon dates forty days out, but beyond that good reason must be proffered.

The first post-arraignment date in First Session is a pre-trial conference. If bail was set without prejudice, bail will be heard upon request of the defendant at the pretrial conference. The court needs to be informed by defense counsel if and when a “without prejudice” bail is to be heard. The court has a defendant transport protocol. Defendants will always be transported for arraignment, bail, § 58A hearings, plea discussion conferences, pleas, evidentiary suppression motions, evidentiary competency motions, and trial. Defendants will also be transported for nonevidentiary dismissal motions such as *McCarthy/O’Dell* motions, non-evidentiary suppression motions, counsel representation motions, buccal swab motions, and some contested Rule 17 motions. The court will not order a defendant transported for a pretrial conference, routine discovery motions, compliance, status,

filing of motions, scheduling of motions, and final pre-trial conferences. Defense counsel can request a video habe for any court appearance for which a defendant is not transported and the defendant will be able to observe the hearing by means of video conferencing. At the conclusion of the pre-trial conference, as with every First Session appearance, the court will inquire of counsel as to the purpose of the next appearance, ask for an agreed-upon date, and will schedule it as requested, assuming court availability and adherence to the thirty-day rule.

Plea discussion conferences with judge participation pursuant to Mass. R. Crim. P. 12(b)(2), will be scheduled and heard on the record in First Session. They will be conducted at sidebar or in open court, but always on the record.

For the past several years, the court has provided an “early plea discussion conference session.” Early plea discussion conferences are generally scheduled for 2:00, and must be requested before substantive litigation, beyond routine discovery matters, has taken place. It is expected that an early plea discussion conference will be requested within the first two or three appearances post-arraignment, and certainly before dismissal and/or suppression motions are litigated.

First Session also conducts bail reviews on a daily basis. All bail reviews, with the exception of reviews of § 58A detention orders, are conducted by means of video conference links with both Middleton House of Correction (for male

defendants) and South Bay (for female defendants). Bail reviews are almost always conducted late in the morning, from about on or after 11:30. The court makes every effort of reach and conclude bail reviews before the 1:00 lunch break.

Reviews of § 58A detention orders are not conducted by means of video conferencing. Whether male or female, defendants seeking review of a § 58A detention orders are transported to court. The defendant's attorney from the district court must appear and represent the § 58A defendant on an appeal of a § 58A detention order, or if appealing any conditions of release set by the district court.

Unless advance excusal is granted by the court, non-custodial defendants are expected to be present for each First Session appearance. One or both parties can make a request to advance and add a case to the First Session list by obtaining the case file from the clerk's office and having it called in the normal course. Add-ons will be heard provided that they do not interfere with regularly scheduled business. However they must be brief matters and are commonly used to change scheduled dates that have become unavailable for one counsel or the other since they were scheduled. Add-ons are frequently brought forward by just one counsel, with the agreement of the non-appearing counsel.

First Session also handles all probation matters arising out of the Salem Probation Office as part of the normal First Session list. Probation matters

supervised out of the Lawrence Probation Office are scheduled for Wednesday afternoon at 1:30 in the Lawrence Criminal Session.