

Hampden County Criminal First Session Protocol (Pilot)

A. Number of Scheduled First Session Events Per Day

There should be no more than forty scheduled events each day in the First Session. If scheduled events on a given day reach fifty, the session Clerk will post it as a “block out” date on the courtroom board and additional events can only be scheduled with the permission of the First Session Special Magistrate or First Session Judge.

B. Limit on Number of Custodial Defendants

No more than 30 custodial defendants should be scheduled to appear on any given day. This number includes all custodial defendants who are scheduled to appear, regardless of whether they are habed in for First Session events, jury trial or other matters scheduled in trial sessions. The Clerk will notify the First Session Judge when the requested habes for a given day approach 30. The Clerk should not issue more than 30 habes without the approval of the First Session Judge.

C. Arraignment

1. All cases will be arraigned in the First Session by the judge or the Special Magistrate, and will be assigned to the A, B or C track per Superior Court Standing Order 2-86. Per the track designation, the judge or Magistrate shall assign dates for the following at arraignment:
 - a. The parties shall hold an out-of-court pre-trial conference no later than 45 days after arraignment for “A” track cases; 90 days of arraignment for “B” track cases; and 120 days of arraignment for “C” track cases, per Standing Order 2-86.
 - b. A pre-trial hearing date in the First Session shall be held no later than 90 days after arraignment for “A” track cases; 135 days after arraignment for “B” track cases; and 180 days after arraignment for “C” track cases, per Standing Order 2-86.
2. Appointment of Counsel: Unless represented by private counsel, an indigent defendant must be appointed counsel at the time of arraignment. The attorney should be appointed to represent the defendant throughout the case, rather than for arraignment only. In the event that it is necessary to appoint an attorney to represent a defendant for arraignment only and the defendant is held on bail or preventive detention, permanent counsel must be appointed within seven days of arraignment.
3. Bail: The First Session Magistrate may set bail by agreement of the parties

without prejudice. The Special Magistrate may, in his or her discretion, decline to consider bail and refer the matter directly to the First Session Judge, or to the RAJ or his or her designee if the First Session Judge is unavailable for a bail hearing. Bail review hearings shall be held at 11 a.m. via videoconference unless ordered otherwise by the First Session Judge for good cause shown.

4. Automatic Discovery: All mandatory discovery required by M.R.Crim.P. 14 is to be provided at arraignment or at the earliest possible time thereafter. The First Session Magistrate shall direct the Commonwealth to provide “Automatic Discovery” on a date prior to the scheduled pre-trial conference date. See M. R. Crim. P. 14(a)(1)(A).
5. Defendant’s Record and Preservation of Evidence: The Special Magistrate shall also ensure that a copy of the defendant’s criminal record, if any, is provided to defense counsel and the Commonwealth, and that the parties are afforded an opportunity to move for the preservation of evidence pursuant to M. R. Crim. P. 14 (a)(1)(E). See M. R. Crim. P. 7 (b)(1), (3) and (4); Superior Court Standing Order 2-86 (II).

D. Pre-Trial Conference

1. The parties are expected to discuss and attempt to resolve all discovery matters upon which agreement can be reached at or before the pre-trial conference. The parties must be prepared to bring to the attention of the court any unresolved discovery matters as soon as they arise, but in any event, no later than at the pre-trial hearing.
2. The Commonwealth shall determine the need for forensic testing, including DNA testing, by the pre-trial conference date and disclose to the defense what, if any items are to be tested; the actual testing shall be commenced as soon as possible.
 - a. In the case of DNA, if the Commonwealth will be seeking a DNA sample from the defendant, this shall be discussed in advance of the pre-trial hearing. If agreement is not reached, the Commonwealth will file a motion to compel no later than the pre-trial hearing.

E. Pre-Trial Hearing

1. Trial dates and a date for a final pre-trial conference shall be set at the pre-trial hearing. Superior Court Standing Order 2-86 (IV). The trial date is expected to be set for a date prior to the expiration of the case track termination date. The final pre-trial conference date will be set approximately seven (7) to fourteen (14) days

prior to the trial date. Trial dates will be staggered throughout the week. No more than five cases should be scheduled for trial on any given date.

2. The parties will report on the possibility of a change of plea, and a date may be scheduled for dispositional conference prior to the trial date if requested by any party.
3. Any remaining discovery issues shall be addressed at the pre-trial hearing.
M.R.Crim.P. 11 (b)(2); M.R.Crim.P. 13 (d).
 - a. If there are discovery issues on which the parties cannot agree and a discovery motion has been served and filed in advance of the pre-trial hearing, it may be addressed at the hearing. If no discovery motion has been filed, dates shall be set for the filing and hearing of discovery motions as soon as possible
 - b. When there is agreement regarding additional discovery to be provided, a compliance date shall be set and counsel will be directed to notify the First Session Judge if the discovery has not been provided by the compliance date. Where discovery has not been provided by the compliance date, the First Session magistrate or judge shall schedule a compliance hearing pursuant to M. R. Crim. P 11 (b)(2)(iii), (c).
4. Upon completion of discovery, the prosecutor will file a certificate of compliance and final notice of discovery listing all items provided.
5. Dates shall be set for filing and hearings on all non-evidentiary motions to dismiss, and for the filing of motions to suppress and such motions as may require an evidentiary hearing.
 - a. Evidentiary motions will not be scheduled for hearing until the motion is filed so that the court can properly evaluate the time needed for hearing. Accordingly, a scheduling conference shall be held on the date set as the filing deadline. A separate calendar log will be kept limiting evidentiary hearings to 1-2 per day depending on reported length.
 - b. On the hearing date, the First Session Judge and Clerk will assign each suppression hearing to an available trial session. When possible, assignments may be made in advance of the scheduled hearing date.

F. Final Pre-Trial Conferences and Trial Assignment

1. On the date scheduled for the final pre-trial conference, the parties shall report to the First Session, and shall submit their Joint Pre-Trial Conference Memorandum, in accordance with Standing Order 2-86, and all motions *in limine*, and requests for juror *voir dire*, if any, shall be served and filed in advance of the final pre-trial conference in accordance with Superior Court Rule 6.
2. The First Session Judge may meet weekly with the Special Magistrate(s), District Attorney's representative, CPCS Supervising Attorney or designee, and Lawyers for Justice representative, to determine which upcoming scheduled trials are ready to impanel the following week. The First Session Judge then assigns those cases to any open criminal sessions with the goal of impaneling on, or as close as possible to, the date set for trial. The trial session judge thereafter manages all trial and pretrial matters.
 - a. The First Session Judge shall endeavor to assign a case to a trial session sufficiently in advance of the scheduled trial date so that motions *in limine* and juror *voir dire* requests can be reasonably addressed by the trial judge in an effort to adhere to the scheduled trial date. The Special Magistrate will notify the trial session's courtroom Clerk and counsel for the parties that the case has been assigned to a session, and advise counsel that they are to check in with the courtroom Clerk.
 - b. A modest number of cases that require a "Session Assignment" designation may be accommodated.
 - c. There may arise the occasional need to send additional trial(s) to the trial session to follow the first such scheduled trial.

G. Motions to Continue Trials

1. Superior Court Standing Order 2-86 states, "All trial dates shall be set in the first session and all motions for continuances...shall take place in the first session." Accordingly, motions to continue trials are presumptively to be filed and heard in the first session before the case is assigned to a session. Any motion to continue trial filed after a case is sent to a session may be heard by the session judge, but if the motion is to be allowed the case shall be sent to the first session for

rescheduling. M. R. Crim. P. 10 provides that motions to continue trials shall be considered by a judge and sets forth factors the judge is to consider.

2. If a trial session cannot reach a case for trial on or near the scheduled date for any reason, it should be sent back to the First Session for reassignment or re-scheduling.

H. Sexually Dangerous Person Cases

SDP cases are entered on the civil docket, managed in the First Session, and tried in a criminal trial session (although the case may be tried in the civil session if no criminal session is available). This process was established to make sure that the constitutional protections shared by defendants in criminal cases and respondents in SDP cases are stringently observed.