

MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rule 19(b). Less Than a Full Jury

DRAFT Reporter's Notes--2019

This amendment to Mass. R. Crim. P. 19(b) implements *Commonwealth v. Bennefield*, 482 Mass. 250 (2019), by specifying the procedure through which a defendant may waive the right to a full jury after jeopardy has attached. The Court held in *Bennefield* that a colloquy on the record is essential to establish a valid waiver. *Id.* at 257. It referenced with approval the principles applicable to the colloquy required for a valid waiver of the right to a jury trial. See *Ciummei v. Commonwealth*, 378 Mass. 504, 509-510 (1979). As in the earlier rule, the defendant must also file with the court a signed, written waiver of the right to a full jury. This waiver will be valid, however, only with the accompanying colloquy. *Bennefield*, *id.* Furthermore, the absence of a written waiver would not, by itself, be a ground for vacating a conviction. *Id.*