

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**SUFFOLK, ss.**

**SUPERIOR COURT  
DEPARTMENT**

**STANDING ORDER NO. 2-86  
(AMENDED)**

**Applicable to All Counties  
to cases initiated by indictment on or  
after September 8, 2009**

**Subject: Criminal Case Management**

**I.**

**PURPOSES**

To improve procedures in criminal cases in the Superior Court.

To promote uniformity in practice throughout the Commonwealth.

To insure compliance with the provisions and aims of the Rules of Criminal Procedure and Rules of the Superior Court.

To recognize that a defendant's right to speedy trial, and the public, including victims and witnesses, interest in a timely, fair and just resolution of criminal cases, is best achieved by application of uniform and consistent time standards for the conduct of criminal cases in Superior Court.

To encourage the cooperation between the court, the prosecuting attorneys and the defense bar with a view towards a just and efficient disposition of criminal cases.

To provide guidelines for application in the great majority of cases, recognizing that a judge, in the exercise of discretion, may adjust or extend time periods in individual cases to insure a defendant's right to fair trial and the effective assistance of counsel, as well as, the protection of public safety.

To identify non-trial cases at the earliest stage so as to encourage their timely disposition with consequent savings of public and private resources.

## II.

### ARRAIGNMENTS

Arraignment will ordinarily take place in the first session by the judge presiding in that session, except in such counties utilizing a magistrate session pursuant to G. L. c. 221, §§ 62B and 62C in which case arraignment shall occur before the magistrate, or in a room list session in such counties utilizing a room list system for the assignment of cases.

An arraignment in Superior Court shall be conducted according to Mass. R. Crim. P. 7. After entry of the defendant's plea to the charges, the judge or magistrate shall schedule dates for a mandatory pre-trial conference and a mandatory pre-trial hearing, the latter to occur within 90 days of arraignment for an "A" track case, 135 days of arraignment for a "B" track case, and 180 days of arraignment for a "C" track case.

At arraignment, the clerk shall issue a Notice of Presumptive Track Designation in the form of a Scheduling Order, setting forth dates at or before which certain events shall occur. The presumptive track designation shall be determined based solely on the lead indictment or charge unless a judge, for good cause shown, determines that a different track designation shall apply. In addition, the judge or clerk shall set forth dates for the filing and hearing of discovery motions and shall set a date for the filing of the Certificate of Compliance under Mass. R. Crim. P. 14(a)(3).

## III.

### CASE TRACK DESIGNATIONS

Cases shall be assigned a presumptive case track at arraignment that will establish a presumptive time period for disposition of the case. Cases shall be designated "A", "B", or "C" track cases based on the offense charged in the indictment, and on consideration of any extenuating or special circumstances raised by the parties. In the event more than one charge exists, the case track shall be the longest track determined by reference to the charges.

There shall be three criminal case tracks as follows:

<u>"A"</u>	<u>"B"</u>	<u>"C"</u>
Assaults and batteries (non-sexual)	Arson	Kidnapping
Breaking and entering	Embezzlement	Manslaughter
Burglary	Fraud	Murder
Civil rights offenses	Home invasion	Rape
Destruction of property	Larcenous scheme	
Firearms offenses	Robberies	
Larcenies	Sexual offenses other than rape	
Mayhem	Motor Vehicle Homicide	
Narcotics offenses (other than Trafficking/Subsequent Offenses)	Trafficking/Subsequent Offense Narcotics	
Operating under the influence		

Accessories to specific offenses, assaults with the specific intent to commit other offenses, attempts, cases carrying enhanced penalties, and conspiracies shall receive the same case track designations as provided for the underlying offenses.

The clerk shall enter the case track designation on the court's electronic docket, and shall enter the scheduled dates for pre-trial and trial proceedings in a Scheduling Order.

#### IV.

#### **AUTOMATIC DISCOVERY**

Automatic discovery, as defined by Mass. R. Crim. P. 14(a), shall be provided, or notice thereof given, at arraignment if possible, or thereafter at the earliest time possible, in the exercise of due diligence, in order to permit the Commonwealth and the defendant sufficient time in advance of the pre-trial conference to evaluate the case and meaningfully participate in a pre-trial conference.

#### V.

#### **THE PRE-TRIAL CONFERENCE**

The prosecuting attorney and defense counsel shall confer prior to the scheduled pre-trial hearing in order to conference the case and to prepare a written pre-trial conference report. In accordance with Mass. R. Crim. P. 11(a), the defendant shall be available for attendance at the pre-trial conference. Further, the court may require the conference to be held at court under the supervision of a judge or magistrate. The pre-trial conference may occur on the same day as the pre-trial hearing provided that the prosecution has furnished discovery to the defendant at least seven days prior to the pre-trial hearing.

The parties shall discuss those matters set forth in Mass. R. Crim. P. 11(a)(1), and shall reflect the results of the conference in the written conference report filed in accordance with Mass. R. Crim. P. 11(a)(2). Counsel shall also discuss whether the case can be disposed of by means of a plea and, if so, shall propose a date for change of plea within the conference report. Except where the parties have tentatively reached an agreement to resolve the case by change of plea, counsel shall set forth within the conference report proposed dates for any anticipated pre-trial events (motion filing and hearing dates, etc.) and a proposed trial date which shall be determined according to the designated case track for the lead charge of the indictment.

#### VI.

#### **THE PRE-TRIAL HEARING**

Counsel who are going to try the case shall attend the pre-trial conference and pre-trial hearing and shall personally sign the conference report. In all cases the defendant shall be available for the pre-trial hearing in the courthouse, and shall sign the completed conference report when necessary to waive constitutional rights or when the report contains stipulations as to material facts. The conference report shall be tendered to the first session judge for his examination and approval before the clerk accepts it for filing.

The first session or room list judge shall personally meet with counsel and examine the proposed conference report so as to bring it into conformity with the spirit and language of Mass. R. Crim. P. 11. The judge shall determine the likelihood of trial, its length, and the issues in dispute. At this hearing the judge has the responsibility to foster plea negotiations within constitutional parameters and may, in her discretion, send the case to any available criminal session for a pre-trial hearing, and the judge sitting in the receiving session shall conduct the pre-trial hearing.

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a trial date. In the event that such dates are scheduled in a session other than the first or room list session, such dates shall be tentative until approved by the first session or room list judge.

## VII.

### **FINAL CASE TRACK DESIGNATION**

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a firm trial date. In the event that such dates are scheduled in a session other than the first session, such dates shall be tentative until approved by the first session or room list judge.

In confirming the final case track designation applicable to the case, the judge may consider whether any special circumstances exist to warrant placing the case on an alternate track. Special circumstances may be raised orally by counsel at the pre-trial hearing or may be set forth in a written submission to the court. Special circumstances include, but are not limited to: unavailability of a victim or essential witness; information relating to the victim's capacity to testify at trial within the time frame established by the case track; issues relating to a defendant's competency to stand trial or criminal responsibility; the need for a change of venue based on pre-trial publicity; existence of multiple defendants; anticipated delays occasioned by necessary forensic or scientific testing (e.g. DNA testing, drug analysis of multiple samples, etc.); necessity for extended pre-trial hearings such as *Daubert/Lanigan*, *Dwyer/Lampron*, *Adjutant*, *Blaisdell*-type hearings, or similar proceedings; but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications. Counsel shall be afforded an opportunity to be heard regarding the existence of any special circumstance.

After consideration of special circumstances, the judge shall confirm the final case track designation applicable to the case and shall so designate on the record. Cases designated on the "A" Track shall presumptively be tried within 180 days of arraignment. Cases designated on the "B" Track shall presumptively be tried within 270 days of arraignment. Cases designated on the "C" Track shall presumptively be tried within 360 days of arraignment.

Following the court's determination of the final case track designation, the judge, in consultation with counsel, shall schedule a trial date, falling within the presumptive time periods set forth above. The judge shall also schedule dates for any contemplated pre-trial proceedings as reflected in the pre-trial conference report, and shall schedule a final pre-trial conference fourteen days prior to the assigned trial date. The selection of a trial date by trial counsel, either as reflected in the pre-trial conference report or following the pre-trial hearing, shall be deemed to be the equivalent of the district attorney placing the case on the trial list under G.L. c. 278, §1, and in accordance with Mass. R. Crim. P. 11 (a)(1)(C), shall not be changed without express permission of the court.

## VIII.

### **AMENDMENTS TO THE SCHEDULING ORDER**

The court recognizes that there are cases which by their very nature and complexity require special tracking standards and, as well, that unanticipated events may delay the trial of a case or require that a previously determined date be extended or continued. Therefore, a Scheduling Order may, from time to time and for good cause shown, be amended upon oral motion of the parties. Special consideration for extending a Scheduling Order shall be given when the request is jointly made by the prosecutor and defense attorney and supported by good cause. All requests for an enlargement or limitation of a scheduled event shall in the first instance, be made by oral motion to the judge sitting in the session where the case is assigned. If the session judge hearing the motion denies the motion to enlarge or amend the Scheduling Order, the aggrieved party may file a motion for reconsideration with the session judge who heard the oral motion. The motion for reconsideration shall be in writing and set forth a statement specifying in detail the facts upon which the moving party then relies in support of said motion. The motion for reconsideration, and any opposition thereto, shall be submitted on the briefs without personal appearance or oral argument by counsel within seven days of the denial or the oral motion.

In the event the Scheduling Order is amended, the clerk shall enter the amended dates in the court's electronic docket and shall revise the Scheduling Order accordingly.

## IX.

### **EARLY DISPOSITION PROCEDURE**

At anytime within 45 days of the pre-trial conference, counsel may advance the case for an early disposition by notifying the first session or room list clerk who shall schedule the case for a hearing.

## **X.**

### **FINAL PRE-TRIAL CONFERENCE**

A final pre-trial conference shall be held fourteen days prior to the scheduled trial date. Trial counsel shall attend the final pre-trial conference. Prior to the conference, counsel shall meet for the purpose of preparing a Joint Pre-trial Memorandum, which shall be filed with the court at the time of said final pre-trial conference. Unless all counsel agree otherwise, counsel for the Commonwealth shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

- (1) Agreed statement of facts to be read to the jury during impanelment. (If counsel are unable to agree, each attorney shall submit a proposed statement of facts);
- (2) Proposed stipulations of the parties;
- (3) List of names of prospective witnesses;
- (4) List of proposed exhibits;
- (5) Statement of disputed legal issues, including but not limited to evidentiary issues (i.e. privilege, immunity, fresh complaint testimony, rape-shield, etc.);
- (6) List of anticipated pre-trial or trial motions to be heard by the trial judge;
- (7) Whether the defendant or any witness is in custody, and if so, where;
- (8) Whether the defendant or any witness requires an interpreter or other similar needs and, if so, the language or service sought; and
- (9) Estimated length of trial.

## **XI.**

### **CONTINUANCES OF TRIAL DATE**

A motion to continue a trial date, once set or confirmed by the court, shall be in writing and supported by good cause in conformity with Mass. R. Crim. P. Rule 10. Such motion shall include the following:

- (a) whether the motion is a joint motion; and if not a joint motion, state, if known, whether there is opposition;
- (b) the defendant's custody status;
- (c) the specific grounds for the requested continuance, including when counsel learned of the grounds necessitating the request;

- (d) the date when the case was first assigned a trial date;
- (e) whether the trial date has been previously continued and, if so, the number of such continuances and the reasons therefor.

Special consideration for continuing a trial date shall be given when a motion to continue is jointly made by the prosecutor and defense attorney.

If the judge denies any motion to continue the trial, the judge shall state the reasons for such denial.

## **XII.**

### **PROCEDURES APPLICABLE TO THE FIRST SESSION**

In counties utilizing a first session the following procedures shall apply. In counties utilizing a room list system of case assignments, the room list session shall perform the proceedings described below.

The first session shall receive all presentments by the grand jury, shall conduct all arraignments, bail reviews, dangerousness hearings, and other pre-trial hearings and proceedings. The first session judge may utilize a magistrate's session to conduct arraignments, bails and pre-trial proceedings as assigned by the first session judge, and may also transfer cases to available criminal sessions for discrete events (e.g. a pre-trial conference or pre-trial hearing). All trial dates shall be set in the first session and all motions for continuance or amendment to the case track designation shall take place in the first session.

The first session judge shall assign cases scheduled for trial to the criminal trial sessions then sitting. Ordinarily, cases involving defendants in custody, defendants whose pre-trial liberty is reasonably believed to present unusual risks to society, and cases given priority by statute (i.e., criminal proceedings for sex crimes involving child victims or witnesses), shall be given priority.

Once in every two months, the Regional Administrative Justice or his/her designee shall conduct a tracking review of all cases that have been scheduled but not reached for trial within the presumptive time, as amended or extended by the court. All such cases shall be prioritized for trial at the earliest available date.

## **XIII.**

### **MULTI-LOCATION, SINGLE SESSION, AND SPECIALIZED SESSION COUNTIES**

In those counties where from time to time there are only single judge criminal sessions or counties where there are specialized sessions, the duties imposed upon the first session judge by part XII may be modified as necessary.

**XIV.**

**JUDICIAL DISCRETION**

It is understood that specific situations may arise from time to time which require some variation from the procedures set forth above. In the interest of justice and to address specific concerns in unusual circumstances, and in the promotion of judicial efficiency, the first session judge, in his or her sound discretion, may extend the time periods and alter procedural requirements hereinbefore mandated.

**XV.**

**EFFECT OF THIS STANDING ORDER**

The procedures set forth herein are intended to facilitate the timely, fair and accurate resolution of criminal cases and to ensure the efficient use of court resources. They do not supplant any existing rule of criminal procedure or statute. A defendant's statutory right to a speedy trial is determined by Mass. R. Crim. P. 36 and not by reference to this Standing Order.

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Barbara J. Rouse  
Chief Justice, Superior Court

Effective: September 8, 2009

Dated: June 1, 2009