

Misdemeanor Trial Readiness Procedures

(Except VRO cases)

1. Arraignment at the Justice Center:

- Trial Readiness hearing date set on the last Friday within 42 days from date of arraignment
 - Trial dates to be set at the Trial Readiness hearings;
 - **No trial date will be set from the arraignment court**
 - Trial Readiness hearing dockets will be set as follows:
 - **A** docket: DV cases
 - **B** docket: Privately retained attorneys, Consortium, and Rose City Law
 - **C** docket: Metropolitan Public Defender (MPD), plus two designated MDI attys
 - **D** docket: Multnomah Defenders Inc. (MDI) attorneys
- Trial Readiness hrg date is the same for in and out of custody defendants
- Discovery to be provided as soon as possible after arraignment
- Expedited DUII Plea Option:
 - DDA will note eligibility on the charging instrument
 - Arraignment judge will advise those eligible for the option he/she has 30 days within which:
 - to docket and attend the orientation (currently in ctrm #608: Judge McShane) and
 - to elect the option
 - Additional time will only be granted by the CPC judge if there are compelling circumstances; (e.g., lack of BAC test results)
 - If compelling circumstances exist, defense atty must set the motion before the CPC judge within 30 days of arraignment to extend the time to accept the Expedited DUII Plea

2. Prior to Trial Readiness Hearing:

- DDA to be assigned to the case as soon as possible after arraignment
- DDA to send written offer to defense atty within 30 days of arraignment
- After the attys' review of their own schedules, and confirmation of the availability of the witnesses necessary to proceed to trial (DA) and of the defendant's availability (and critical witnesses), the DDA and Defense atty shall confer (exchanges by email encouraged) preferably prior to the Trial Readiness date to:
 - Select a trial date within the three week period that is 10 – 27 days from the Friday Trial Readiness hrg (thus trial set 49 - 66 days from arraignment)
 - Select at least 2 alternative dates case can be tried during the same 3 week period
 - If an acceleration of Trial Readiness Hrg or Trial Date is requested:

- In non DV cases:
 - DDA and defense atty first to agree upon the trial date
 - Schedule a F/P date/time with timely notice to opposing counsel
 - Both attys to appear in CPC to have an accelerated trial date set (with alternate availability if agreed upon trial date not available)
- In DV cases:
 - DDA and defense atty first to agree upon the trial date
 - Schedule a F/P date/time with timely notice to opposing counsel
 - Both attys to appear before that week's DV judge to have an accelerated trial date set (with alternate availability if agreed upon trial date not available)
- Once an accelerated date has been selected and approved by the court, the Trial Readiness date set from arraignment shall be canceled
- Pleas, release hearings and other case matters that require court action prior to a Trial Readiness hrg shall be set on the F/P docket of the CPC judge for non DV cases, and on the F/P docket of the DV judge for DV cases; **all** (non DV and DV) substitution of atty hearings are set before the CPC judge

3. Trial Readiness Hearing:

- In order to select a trial date, the parties must confirm their readiness to go to trial within the allotted time, i.e., the DA shall report confirmation of the availability of the witnesses necessary to proceed to trial, and the defense shall confirm defendant's availability (and critical witnesses); otherwise, the attorney(s) shall report unable to proceed and the court shall take the appropriate action
- Out of custody defendants shall appear (unless waiver of appearance previously signed by CPC in non DV case or the DV judge in a DV case)
- In custody defendants shall not be transported to the courthouse jail *unless* requested by the defense atty (e.g., address a sixty day issue: ORS 136.290; present stipulated conditions re: release; enter a plea before an available judge)
 - Request to transport must be made by 11 am on the day prior to the Trial Readiness hearing (for those housed in a Multnomah County jail facility)
 - Contact criminal calendaring (503-988-3235 ext. 3) to arrange transport
- For those defendants not housed in a local jail facility, a timely motion must be submitted to obtain an order to transport the defendant; e.g., ten days prior to the hearing date for those incarcerated in a State/DOC correctional facility
- **Trial Readiness hrg docket times:**
 - Beginning at 8:30 am in the DV court
 - Beginning at 9 am in the three other assigned (non DV) Trial Readiness hrg courts
- **Cases to be called in order:**
 - Shall not be grouped by attorney (**current** technology unable to efficiently respond across all courtrooms to track number of cases assigned to trial on each day if cases taken out of order)

- Provides equal access to earlier v. later dates over time to all attys
- Creates consistency and predictability of procedures across ctrms for the attys
- **Date Selection:**
 - DDA and defense attorney present date(s) selected for trial within 10 to 27 days following the Friday Trial Readiness hrg
 - Note: Date selected for trial is within 30 days of the Trial Readiness Hearing enabling DDA to know schedules of officer witnesses
 - Attys complete form 23-50 entitled “Misdemeanor Trial Readiness hearing Case Report and Order” and hand to the judge via the clerk
 - Attorneys orally report directly to the judge the information called for in the form (prompt on counsel table)
 - Judge reviews form for completeness; sets trial date and fills in date on form
- **Setting of Cases for Trial:**

CPC and the Trial Readiness judges, and the DV Trial Readiness judge, will know the number of cases set for trial on each trial day including:

 - Those previously set on each trial day
 - Those being set during the calling of the Trial Readiness dockets (through contemporaneous in-court OJIN entries)
 - Maximum number of trials to be set for trial on one trial day:
 - Non DV trials: a maximum of 5 cases per trial court per day/15 total trials on three non DV misdemeanor trial dockets per day (Monday through Thursday)
 - DV trials: a maximum of 5 cases set per day on the assigned DV judge trial’s docket (Tuesdays and Wednesdays only)
 - Exceeding the daily trial cap:
 - Non DV cases: CPC has the authority to exceed the cap in extraordinary circumstances (e.g., in custody defendant; highly specialized and difficult to schedule interpreter) – def.atty and DDA shall go to CPC for a ruling if are requesting the trial be assigned on a particular date and the cap has been reached
 - DV cases: DV Trial Readiness judge has the authority to exceed the daily trial cap in extraordinary circumstances
 - Maximum number of trials to be set on the same day by the same defense attorney is two - including case(s) on the Domestic Violence docket
 - Defense attorney is to monitor his/her current trial settings to avoid setting more than two cases for trial on the same date
 - Exception: a third case will be set if the defense atty has a custody case that can only be tried on the date where the defense atty’s two other cases have previously been set
 - If the docket created after Trial Readiness documents there are more than 3 cases on call for assignment to the same court for trial, the DA may reassign the cases which exceed three to another DDA for trial; (may result in the case(s) being transferred to another courtroom for trial)
 - DUII cases will be set only on Mondays and Wednesdays

- DV cases will be set for trial only on Tuesdays and Wednesdays (call will be the day before)
- The available slots for trials will be ‘fluid’ as cases are removed by plea, dismissal, bench warrant, setover - opening up additional slots
- **Trial Settings Beyond 27 Days:**

Trial date beyond 27 days after the Trial Readiness hrg will only be allowed when circumstances are extraordinary, or maximum number of cases already set on trial date

 - Non DV cases: attys will go the same morning to CPC to request a trial date
 - First agree upon the trial date;
 - Then set a F/P date in CPC at least 10 days prior to the trial date at which both attys appear to confirm witness availability (particularly police officers)
 - DV cases: DDA and defense atty will present the request to the DV Trial Readiness judge
 - At the conclusion of the calling of the docket if time allows, or
 - By scheduling the request on the DV F/P docket with timely notice to opposing counsel if parties unable to address the issue on the Trial Readiness morning
- **Release motions** at the Trial Readiness hrg:
 - At the discretion of the judge, release motions with stipulated conditions may be heard at the time the case is called or at the conclusion of the docket
 - After conclusion of the Trial Readiness docket, release motions without stipulations may be addressed if time allows and the parties are in agreement they are ready to proceed
- **Negotiations** at Trial Readiness hrg:
 - Parties are encouraged to negotiate provided they are ready to report when the atty’s cases are called
 - As time allows, judges may participate in settlement discussions after the Trial Readiness docket has been called, and after any pleas which are ready to go have been taken
- **Pleas:**
 - Non DV cases:
 - May be taken by the Trial Readiness judge following the calling of the docket as time allows
 - May be heard by CPC judge
 - May be sent via CPC (attys appear in CPC or TR court clerk contacts CPC) to an available judge if a DDA is available
 - May be set on the CPC docket prior to call
 - Trial date shall be selected by the defense atty and DDA if the plea is not going to be taken the same day as the Trial Readiness hrg, (e.g., needs to be docketed on the CPC F/P docket)
 - DV cases:
 - May be taken after the calling of the docket as time allows

- May be sent to an available judge if a DDA is also available
 - May be set on DV further proceedings docket prior to call
 - Trial date shall be selected by the defense atty and DDA if the plea is not going to be taken the same day as the Trial Readiness hrg, (e.g., needs to be docketed on the DV F/P docket)
- On Friday mornings, the CPC judge and the DV judge shall hear:
 - Motions for setovers (see sections 4A and 4B)
 - Pleas and release hrgs from Trial Readiness docket as time allows
- Either the attorney of record, or a colleague if the attorney has a conflict, **must** appear on the scheduled Trial Readiness date
 - Exception: A motion to reset the Trial Readiness date may be set on the appropriate further proceedings docket if the following criteria is met:
 - Def. atty is scheduled for trial in another county, or
 - Def. atty is a sole practitioner and not part of a consortium, and
 - Has confirmed previously set conference or vacation (not subject to being rescheduled) or unique event (e.g., daughter’s graduation) *and* represents no other atty can appear on his/her behalf with proposed trial dates, and
 - Requests (initiates call) within 5 judicial days of arraignment that a motion be set on the appropriate F/P docket to request a reset of the Trial Readiness date for above reason(s)
 - Motion must be set on F/P docket so District Attorney’s office has notice
 - Non DV cases shall be set on the CPC F/P docket
 - DV cases shall be set on DV F/P docket

4. (A) Motion for Setover in non DV cases:

- No automatic setovers for either side
- Motions for setovers granted only for extraordinary and compelling reasons
- Attys to complete form 23-30A entitled “Motion for Setover and Order:”
 - If motion raised after the Trial Readiness hrg, and prior to the week of trial, the motion shall be scheduled on CPC’s further proceedings docket
 - If the motion arises during the week the trial is set, the moving atty with opposing counsel (or without if by consent) shall appear in CPC at ex parte (8:30 am) or other time the CPC judge consents to hearing the matter
 - If the motion arises on the morning of call, the attys shall go to CPC at 8:30 am (i.e., PRIOR to 8:45 am call in presiding court) to present the unexpected and extraordinary reason the case cannot go forward to trial the following day

(B) Motion for Setover in DV cases:

- No automatic setovers for either side
- Motions for setovers granted only for extraordinary and compelling reasons
- Attys to complete form 23-30A entitled “Motion for Setover and Order”
- Scheduling of setover motions:

- Motion for setover raised PRIOR to Friday Trial Readiness hrg shall be:
 - Set on the DV judge's F/P docket
 - If unable to be set on the F/P docket by the Thursday preceding the trial date, then the attys shall appear ex parte at 8:30 am before the DV Trial Readiness judge
 - Moving atty must notify opposing counsel and DV Trial Readiness court of the appearance so that both the court and the DA can obtain the file prior to the appearance
- Motions for setover raised AFTER Trial Readiness hrg and prior to Monday call shall be heard by assigned DV trial judge

5. Trial Assignment (Call in Presiding Court):

- Cases will appear on the Presiding Judge's call docket at 8:45 am one day prior to the date set for trial
 - Cases will be assigned out to trial for the following court day UNLESS:
 - Case is being dismissed: State shall submit a judgment of dismissal at call if it cannot proceed
 - Bench warrant issues:
 - defendant has not appeared;
 - if appearance waived, but atty has lost contact and so reports
 - Defense reports intent to enter a plea
 - (See below re: plea option for plea day of call)
 - Case has been setover by the CPC or designated/trial DV judge
 - Atty reports, at or on day of call, the atty is still in trial on another case that will continue into the following day
 - Case will be set within one week for F/P in CPC or before DV judge to select new trial date within 25 days
- **Non DV cases:**
 - The three misdemeanor trial rotation judges will be assigned the non DV misdemeanor trials from the 8:45 am call docket in presiding court
 - To the extent possible, cases on the same Trial Readiness docket will be kept together for assignment to one trial court (e.g., Docket B cases to the same judge for trial)
 - Procedure enables the DA's office to designate DDA to each case early in the life of the case
 - Note: Challenge for defense bar when defense atty has a DV case and a non DV case ready for trial on same date
 - Other available judges to assume overflow of non DV trials via CPC reassignment (provided DDA available)
 - In the rare instance where there are NO DV cases sent to the DV judge for trial, AND there is an overflow case ready for trial in a non DV court, the DV judge may be assigned a non DV case for trial
- **DV cases:**

- The DV judge will be assigned the DV trials from the 8:45 am call docket in presiding court
- **ALL cases:**
 - Presiding judge will address late arrivals, or delayed reporting in a manner consistent with how such matters are addressed on the felony call docket, or as the presiding judge determines appropriate
 - Out of custody defendants are required to appear at call (absent a waiver)
 - In custody defendants will not be transported/required to appear at call
 - Motions for Change of Judge must be announced at call and filed by 5 pm:
 - Motion and affidavit in non DV cases to be filed with the CPC judge
 - Motion and affidavit in DV cases to be filed with DV judge
 - Case shall be assigned to another DV judge if availability known at call and state reports DDA available to try case;
 - Otherwise, case shall be assigned to an available non DV judge if the state reports a DDA available
- **No setover motions/requests allowed at call**
- **Change of plea** reported morning of call:
 - Every effort will be made to take the plea that morning if the parties request (judge, DDA, and victim availability/election to appear known)
 - In non DV cases, attys and defendant to go to CPC for plea to be entered or, if unavailable, for assignment to another judge
 - If DDA advises there is a victim and the victim has waived the appearance, the plea may proceed before the CPC judge or other judge designated by the CPC judge on the day of call
 - If the DDA advises the victim wishes to be present, and cannot be reached to appear at the plea, the plea must be set on the CPC F/P docket
 - In DV cases, attys and defendant to be assigned from call or appear after call before the DV judge for entry of plea or reassignment
 - If DDA advises the victim has waived the appearance, the plea may proceed before the DV judge or other family law judge designated on the day of call
 - If the DDA advises the victim wishes to be present, and cannot be reached to appear at the plea, the plea must be set on the DV F/P docket
 - If def. atty in trial, plea may be sent to judge in whose court the def. atty is appearing; (DDA shall obtain and forward file)
 - **If defendant does not enter a plea at the time set for plea day of call, the case shall stay on for trial the next day**
 - If plea cannot be taken day of call, or if defense atty requests, case shall be sent to assigned trial court for entry of plea
 - Upon defense attorney's assurance that a plea will be entered, witnesses may be released
 - DA to address victim notification issue
- No back-up trial date (or Trial Readiness) date shall be given

6. Day of Trial re: All Cases:

- Pleas, dismissals, bench warrants addressed by court
 - If plea NOT entered in case sent from call to trial court for a plea
 - Non DV cases: attys shall confer and return to CPC to select a date within the following 25 days
 - DV cases: select trial date within following 25 days

- **Prioritization of trials:**
 - Custody cases
 - Complex interpreter issues
 - Complex witness issues
 - DV cases (overflow from DV court)
 - Issue date
 - Compelling circumstances may affect the priority of the cases assigned from the Presiding Court call docket on a given trial day to a non DV court

- **Excess cases ready for trial:**
 - Non DV cases: attys return to CPC for reassignment:
 - If the atty does not have another case beginning in the assigned court, the attorney shall return to CPC to determine if the case can be assigned to another court for trial;
 - If no judge (and/or DDA) available, judge will set new trial date within 25 days
 - If it is the same attorney on both cases ready to be tried, the attys shall confer to select a trial date within the following 25 days and report the date to CPC (preferably via the clerk in the assigned trial court so as not to delay the beginning of the priority case)
 - If extraordinary circumstances exist which preclude the setting of a new trial date within the 25 day period, the CPC judge, after ruling on the whether the circumstances presented are compelling (e.g., conflict with out-of-county trial coupled with atty conference/vacation, or necessary officer, critical or expert witness unavailable) shall:
 - Set a new trial date on the earliest possible date; and
 - Schedule a F/P hrg through criminal calendaring on the CPC docket two weeks prior to the selected trial date to verify date and witnesses, etc. (in particular, officer availability)
 - Note: An excess case may be sent to a DV judge if DV judge has no DV case (rare instance)

 - DV cases: per DV judge:
 - Shall first be assigned to a family law judge if available
 - If no family law judge available, attys to go to CPC (or via clerk communication) for assignment to an available judge

- If no judge available through CPC, case will be referred to presiding court calendaring staff for assignment if a judge becomes available
- If ultimately no judge available, DV judge will set new trial date within 25 days
- If compelling circumstances exist, the DV judge will set the trial on the earliest date possible
- In all cases:
 - No additional Trial Readiness date shall be set
 - Defendant must be present (absent a waiver) at time new trial date is given and provided with a copy of the order with the new trial date

7. Substitution of Attorney Motions:

- All motions (DV and non DV cases) for substitution of attorney shall be scheduled through criminal calendaring and heard by the CPC judge at the times allotted on the CPC docket

8. Waiver of Appearance:

- Waiver of appearance (for DV and non DV cases) may be granted at any appearance except trial at the discretion of the CPC or DV judge if the following criteria has been met:
 - The defense attorney has met with his/her client prior to the appearance(s) for which the waiver is being requested;
 - There are compelling circumstances (e.g., missing scheduled work) that exist for which the appearance would create an undue hardship;
 - The defense attorney has discussed with the client the 10 -27 day period after the Trial Readiness hrg) during which the case would be set for trial;
 - The defense attorney, because of the nature of the atty-client relationship, can (reasonably) assure the court of the defendant's attendance on the date which will be selected for trial;
 - The defense attorney has conferred with the State's attorney prior to appearing ex parte to request a waiver of appearance(s) and can represent to the court that the state has no objection; and
 - The defense attorney presents a motion which reflects the above criteria have been met to the CPC or DV judge prior to the waiver of appearance being sought.
- The CPC judge signs the order waiving the appearance(s) of defendant if so authorizes, or denies the waiver as to some or all appearances prior to trial. (Use form 23-52 entitled "Motion for Waiver of Appearance and Order")

9. Trial Readiness re: Cases Returning Following the Issuance of a Warrant:

- If the attorney appointment is still in place, the attorney shall be apprised of the continuing appointment when the defendant is arraigned at the Justice Center
 - Case shall be set on the Trial Readiness hrg docket within 28 days

- Shall be set for trial consistent with above procedures within 10-27 days of Trial Readiness hrg date
- If the prior atty appointment has expired, the new attorney will be appointed at the Justice Center arraignment:
 - Shall be set on the Trial Readiness docket within 42 days
 - Shall be set at the Trial Readiness hrg for trial consistent with the above procedures within 10-27 days of the Trial Readiness hrg

10. [Note: Other procedural rules (e.g., tracking with felonies) will be similar to those set out in the misdemeanor system under the pretrial process, and will be delineated in a separate document.]

(5/25/2011: JEF)