

CRIMINAL BENCH TRIALS PROTOCOL

1. **CASE INVENTORIES:** Court Administration has identified 342 cases in “Awaiting Trial” status as of September 2020. These include Trial List cases for the 6 Judges assigned to the Criminal Division as of March 2020 – with intervening dispositions (Guilty Pleas) removed. It is not known how many of these cases are not entitled to a jury trial, i.e. punishable by a sentence of 6 months or less.

2. **TRIAL POOL:** Regardless of the currently assigned Judge, all cases where the defendant is represented by counsel will be assigned to a potential Bench Trial pool. Pro-se cases will not be eligible for this program.

3. **TRIAGE JUDGE CONFERENCE:** The President Judge will designate **one (1) Judge** to act as a TRIAGE JUDGE. The Triage Judge will not be the trial judge, so he/she can actively participate in negotiations without recusal concerns.

(a) Triage cases will be scheduled in trial list order – meaning all trial list cases for “Judge A” will be scheduled first, then “Judge B’s” cases, etc.

(b) Triage cases will be scheduled at twenty (20) minute intervals – 12 per day to start. Conferences will be held in a courtroom with attorneys present. Defendants (incarcerated or on bail) shall be available by video.

(c) The purpose of the conference is to determine:

- (i) if a plea agreement can be reached; or
- (ii) if the parties will agree to have the matter determined via a bench trial; and
- (iii) if the defendant is incarcerated, whether he will appear via advanced communication technology

(d) Any case in which a plea agreement is reached will be scheduled by the Triage Judge’s Court Clerk before an upcoming Plea Day Judge.

(e) Any cases where the Defendant will not agree to a bench trial shall be returned into the Trial Pool designated as a Jury Trial. An Order noting same will be issued by the Triage Judge’s Court Clerk. (If a suppression matter is identified as important, that is noted as well for future reference)

(f) All other cases in which both parties **agree** to the Bench Trial (including Suppression/dipositive motions), will be scheduled by the Triage Judge’s Court Clerk before a BENCH TRIAL Judge. The Triage Judge will determine approximate length of time for Trial, any legal issues, witnesses, and write up a brief synopsis. The Triage Judge will be responsible for making sure the Defendant is aware of his/her right to a Jury Trial and that the waiver is knowing, intelligent and voluntary.

4. *BENCH TRIAL JUDGES*: The number of trial judges will be determined by the number of trials to be scheduled and shall be identified by the President Judge.

5. *BENCH TRIAL PROCEDURE*:

(a) Once the trial date is set, requests for continuance must be made by verified motion to the Triage Judge (letter requests, email requests or telephone requests will not be acknowledged or considered) and shall be granted only upon good cause shown.

(b) The current protocols utilized for conducting Family Trials will apply to criminal Bench Trials. Incarcerated Defendants will participate by ZOOM, with attorneys in Court. If the Defendant is on bail, he/she shall appear in Court. Witnesses can be in Court via ZOOM, if agreed by counsel. All current Phase II safety protocols remain in place.

(c) If, at the time of trial, the Defendant refuses to sign the waiver of Jury Trial or participate by ZOOM, the case will be placed back in the Trial Pool.

6. *PUBLIC ACCESS*: While public access is discouraged due to health concerns, accommodations will be made for individuals who wish to attend.

7. *MISCELLANEOUS*: The Court recognizes the absolute right of Defendants to be tried by a jury of peers. This protocol is not intended to abridge that right nor to coerce or influence any Defendant in exercising that right. Accordingly, the Triage Judge shall merely inquire and not attempt to influence the determination of the Defendant.