



**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS**

Tuesday, August 17, 2021

NOTICE TO THE BAR

TRIAL DIVISION – CRIMINAL

**FELONY WAIVER PROGRAM
POLICIES AND PROCEDURES**

EFFECTIVE TUESDAY, SEPTEMBER 7, 2021

Attached please find the Felony Waiver Program Policies and Procedures (applicable to Courtrooms 604, 704, 804 and 904) which will become effective Tuesday, September 7, 2021.

Honorable Lisette Shirdan-Harris
Administrative Judge, Trial Division

Honorable Lucretia C. Clemons
Supervising Judge, Trial Division-Criminal



The following policies and procedures for the Felony Waiver Program (Courtrooms 604, 704, 804, and 904) will become effective on September 7, 2021. As circumstances related to the COVID-19 pandemic change, these policies will be updated as needed.

1. GENERAL UPDATES

- a. First Listings: First trial listings in a waiver room shall be status conferences to determine trial readiness.
- b. Defendants on Bail: Starting on September 7, 2021, trials may proceed for all defendants, including defendants who are on bail.
- c. Defendants in Custody: Trials for defendants who are in custody will continue to receive priority, but it should be noted that changing transportation policies of state and out-of-county institutions during the pandemic may impact the scheduling of those cases.
- d. Courtroom vs. Zoom: Generally, non-substantive matters (e.g., status hearings, pretrial conferences) will continue to be conducted over Zoom, and substantive proceedings (e.g., trials, evidentiary hearings, sentencings) will proceed in person in the courtroom.
- e. Safety Procedures: Counsel, defendants, witnesses, and all others who are physically present in courtrooms must continue to abide by the FJD's most recently issued COVID-19 safety procedures and requirements, including with respect to masking, social distancing, and other safety measures.

2. PRETRIAL CONFERENCES

- a. Timing: All cases listed for trial will normally have a pretrial conference over Zoom at least one week prior to the trial date.
- b. Preparation for Pretrial Conferences: Counsel are expected to take all necessary steps to confirm their readiness for trial prior to the pretrial conference, including by confirming in advance the availability of all necessary witnesses for trial. Attorneys for the Commonwealth should exercise due diligence to confirm that all necessary officers and complainants will be present to testify on the trial date. Defense counsel should confer with the defendant prior to the pretrial conference to re-confirm that the defendant wishes to proceed with a waiver trial (as opposed to a jury trial or non-trial disposition).
- c. Readiness: At the pretrial conference, counsel will be asked to confirm their readiness for trial. Cases involving bail defendants will be deemed ready for trial only if either (1) the defendant has been served with a subpoena for trial, or (2) counsel for the defense accepts service on behalf of the defendant at the pretrial conference. The Commonwealth should be ready to confirm that all witnesses, including necessary officers and complainants, are available to testify on the scheduled trial date.
- d. Continuances Involving Trailing Cases: When the defense seeks a continuance of a waiver trial date due to the pendency of a separate case involving more serious charges in another courtroom (such as when the defendant intends to enter a

global plea to all charges), the case normally will be marked as a “trailing case” and will be reassigned to the courtroom where the case with the more serious charges is pending

- e. Six Trial Slots Per Day: Due to continuing safety concerns related to the pandemic, waiver judges will be permitted to provide confirmed trial slots to only six cases for each day in their courtrooms. Accordingly, after a case has been confirmed ready for trial at the pretrial conference and has been given one of the six available trial slots for the scheduled trial date, continuances will be granted in rare circumstances and only for good cause. For this reason, it is essential that counsel exercise due diligence to confirm their readiness for trial prior to the pretrial conference date.
- f. Trial Information: If a case is ready for trial, counsel should be prepared to provide the following information to the Court at the pretrial conference:
 - i. estimated trial length;
 - ii. number of witnesses;
 - iii. whether any pretrial motions need be addressed; and
 - iv. whether there is need of an interpreter.
- g. Bench Warrant for Service Only: In cases where defense counsel cannot accept service on behalf of a defendant for trial, the Court will normally ask the Commonwealth to attempt service. If the Commonwealth is unable to confirm that a defendant has received actual notice of the next court date, the Court may issue a “bench warrant for service only” at the next court date.

3. DATE OF TRIAL

- a. Timing of Trial: During the call of the morning list on the date of trial, trial counsel generally will be provided with anticipated trial start times, which are subject to change. Counsel should provide the courtroom crier with a cell phone number so that changes in trial start times can be communicated. All counsel, witnesses, and defendants scheduled for trial on a given trial date are to remain on call and ready for trial on that date throughout the day.
- b. Exhibits: Counsel should bring at least four copy sets of marked exhibits to trial, including copies for the judge, opposing counsel, and witnesses. The exhibits should be distributed prior to the start of trial.
- c. Witnesses: While testifying, witnesses will be seated behind a clear, plexiglass barrier.
- d. Attorney Positioning: Counsel are encouraged to minimize their movements in the courtroom and to remain in one socially distanced location.
- e. Wait Outside Courtroom: Counsel, witnesses, and defendants are asked to wait outside the courtroom until at least five minutes before the trial’s start time.
- f. Continuance Requests on the Date of Trial: As indicated above, after a case has been confirmed as “ready” at the pretrial conference and has been given a trial slot, continuances will be granted only in rare circumstances. Any continuance request made on the date of trial should include detailed information about counsel’s efforts and due diligence to ensure the presence of all necessary witnesses, as well as detailed information regarding the circumstances of a necessary witness’ failure to appear. Absent compelling justification for a continuance on the date of trial, it is within the sound discretion of the trial judge to deny the continuance request.