

PRE-TRIAL COORDINATION PROTOCOL

ADULT CHARGES

This Protocol is subject to change. It is expected that as the Project proceeds, changes will be made and the Protocol will be amended. Please refer to our website at www.manitobacourts.mb.ca for the most updated version of the Protocol.

PRE-TRIAL COORDINATION PROTOCOL

TABLE OF CONTENTS

| | |
|---|----|
| PREAMBLE | 1 |
| APPLICATION OF PROTOCOL | 1 |
| PRE-TRIAL COORDINATOR..... | 1 |
| PRE-TRIAL COORDINATOR'S DOCKET..... | 2 |
| ADMINISTRATIVE TIMELINES | 4 |
| UNREPRESENTED ACCUSED | 6 |
| PRELIMINARY HEARING & TRIAL DATES | 7 |
| CONSENT REMANDS | 8 |
| NON APPEARANCE BY AN ACCUSED | 8 |
| NON APPEARANCE BY COUNSEL | 8 |
| RE-ARREST..... | 8 |
| GUILTY PLEAS | 9 |
| SENIORITY OF COUNSEL..... | 10 |
| ADMINISTRATIVE COURT..... | 10 |

Appendix

Appendix "A" - Crown Stay of Proceeding Form

Appendix "B" - Pre-Plea Comprehension Inquiry Form

Appendix "C" - Designated Offences

PRE-TRIAL COORDINATION PROTOCOL

PREAMBLE

Section 482.1(1)(b) of the *Criminal Code* gives the Court the power to delegate certain administrative tasks to Court personnel. The front-end system requires that the administrative processing of all criminal cases be conducted by Pre-Trial Coordinators (PTC). This process will allow the Crown and the Defence to identify, discuss and resolve administrative issues in a fashion that does not require the attendance of a Judge.

Effective pre-trial coordination will ensure that when a matter appears before a Judge, only the following meaningful events will occur:

- 1) Contested Motions;
- 2) Bail Applications
- 3) Contested Bail Variations;
- 4) Hearings/Trials;
- 5) Sentencing.

APPLICATION OF PROTOCOL

This Protocol applies to all criminal prosecutions involving adults appearing in the Provincial Court – Winnipeg Centre. A separate Protocol exists for Youth Court matters.

All administrative matters relating to these cases will be managed by Pre-Trial Coordinators (PTCs) who are limited jurisdiction Justices of the Peace. This Protocol is the document from which the PTCs obtain their authority and direction. They have no discretion to deviate from this Protocol.

PRE-TRIAL COORDINATOR

Non-discretionary case management by the PTC is essential for successful processing of cases through the criminal justice system. The PTCs are mandated to deal with administrative tasks to ensure that:

- 1) an accused person has been informed of the right to be represented by counsel;
- 2) the defence has received sufficient disclosure to enter a plea. This does not include external reports, such as laboratory reports, medical reports, fire commissioner reports, etc.
- 3) any bail variation issues have been addressed;
- 4) the Crown has reviewed the evidence and considered its position;
- 5) meaningful discussions between counsel have occurred;
- 6) counselling or diversion issues have been addressed;
- 7) a pre-plea comprehension inquiry has been conducted;
- 8) the Certificate of Trial Readiness has been completed.

Additionally, PTCs have the authority to perform the following tasks:

- 1) adjourn matters as required provided the matter has not exceeded its timeline;
- 2) endorse a stay of proceedings upon being provided with a Crown Stay of Proceedings Form, [see attached Appendix “A”];
- 3) issue, cancel or hold warrants;
- 4) allow counsel to withdraw provided counsel seeking to become counsel of record is present or if the PTC issues a warrant for arrest for the accused and counsel asks to be removed as counsel of record;
- 5) allow Legal Aid Duty Counsel to be removed as counsel of record.

PRE-TRIAL COORDINATOR'S DOCKET

Between the time a charge is laid and a matter is ready to proceed before a Judge, the matter will appear on a PTC docket. The PTCs, who are bound by certain administrative timelines, will oversee these dockets.

- a) **Bail Triage Docket – all Adult Bail applications and expedited custody dispositions:** This docket will be held Monday to Friday starting at 9:30 in Courtroom 301 at 408 York Avenue in Winnipeg for bail applications. Expedited custody dispositions can also be heard in the bail courts, time permitting, where both crown and defence are ready to proceed.
- b) **Custody Triage Docket – Where the accused has been denied bail, does not intend to apply for bail or the matter has appeared in bail court for 10 days without a bail application the matter will appear as follows:**
- i) **Domestic Violence matters:** This docket will be held every Monday starting at 9:15 a.m. in Courtroom 302 at 408 York Avenue in Winnipeg.
 - ii) **Federal matters:** This docket will be held every 2nd 4th and 5th Thursday at 9:15 am. in Courtroom 302 at 408 York Avenue
 - iii) **All other Adult matters:** This docket will be held every Friday starting at 9:15 a.m. in Courtroom 302 at 408 York Avenue in Winnipeg.
- c) **Out-of-custody PTC Docket**
- i) **Domestic Violence matters:** This docket will be held every Monday, Tuesday and Wednesday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg.
 - ii) **Federal matters:** This docket will be held every Thursday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg.
 - iii) **All other Adult matters:** This docket will be held every Monday, Tuesday, Wednesday and Thursday at 1:00 p.m. in Courtroom 302 at 408 York Avenue in Winnipeg.
 - iv) **Counselling Program/Diversion Dockets:** This docket will be held every Friday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg

All proceedings will be electronically monitored. The only exception will be the PTC Bail Triage Docket.

ADMINISTRATIVE TIMELINES

The Court, after consultation with Prosecutions, Defence counsel, Legal Aid and the Winnipeg Police Service, has developed administrative timelines for all Adult matters.

The PTC has no authority to deviate from the timelines established by this Protocol. Failure to comply with the timelines as directed by the PTC will result in the matter being referred to the next Administrative Court.

Bail Triage Dockets

All accused will appear on a 9:30 docket and will be “triaged” by the Pre-Trial Coordinator for the purpose of applying for Judicial Interim Release. If the accused is without counsel on the 1st appearance, the PTC will transfer the matter to the Bail Court Judge.

If counsel of record does not appear on a matter, the PTC will be allowed to remand a matter for up to a maximum of three one-day remands. The PTC will advise each accused that their lawyer did not appear to speak to their matter and that it will be put over to the next day’s PTC docket. Following the third one-day remand, the PTC will transfer the matter to appear before the Bail Court Judge.

The PTCs will monitor the amount of time that a new arrest appears on the bail docket. After ten working days, they will remand the accused to the PTC custody docket for a crown to be assigned. Any matter returning to the bail docket will be remanded back to the PTC custody docket after three working days on the bail docket. If defence counsel requires the matter to remain on the bail docket, the matter can be transferred into court for counsel to speak to the presiding bail court judge.

Custody PTC Dockets

Once a matter is remanded to the custody docket, the name of the assigned Crown will be provided at the first appearance on the docket.

The PTC will monitor all matters for 12 weeks from the date of arrest unless the accused is charged with a designated offence as indicated in Appendix “C”. On all designated offences, a timeline of 24 weeks will apply.

Within 4 weeks from the date of arrest, counsel must confirm that they have received sufficient disclosure that will enable the accused to

enter a plea unless the accused is charged with a designated offence as indicated in Appendix “C”. On all designated offences, a timeline of 12 weeks will apply.

Out of Custody PTC Dockets

All charges:

With the exception of domestic violence charges, the first appearance in court on all adult matters will be 8 weeks after release.

The name of the assigned Crown and particulars will be provided to defence at the first appearance on the PTC docket.

The PTC will monitor all matters for 8 weeks from the first appearance on their docket unless the accused is charged with a designated offence as indicated in Appendix “C”. On all designated offences, a timeline of 16 weeks will apply.

Domestic Violence charges only:

The police are expected to provide disclosure within 4 weeks of arrest on all domestic violence matters. Disclosure includes court assistance reports, police narrative reports, officer’s notes, written and video statements. In the following 4 weeks (so up to 8 weeks after release), Prosecutions is expected to assign a Crown to each matter, the assigned crown is expected to review particulars, obtain input from Victim Services if appropriate, and be ready to engage in plea discussions with Defence Counsel. The first appearance in court will be 6 weeks after release.

Counselling/Diversion Programs

If the Crown agrees to refer a matter to a counselling/diversion program, the following timelines will apply from the date of referral:

- 1) an initial one-month remand to confirm enrollment in the program;
- 2) an second one-month remand if enrollment has not been confirmed
- 3) a remand for three months to complete the program;
- 4) a final remand of one month in the event that the program takes longer to complete than anticipated.

Once the accused has provided the Crown with confirmation of successful completion of the program, the Crown may file a Stay of Proceedings Request Form with the PTC on or before the next remand date

Expiration of timeline

If both Crown and Defence agree that a specific case will require more than the assigned timeline, they may request a consent timeline extension from the PTC. The PTC may only grant one consent timeline extension. There is no limit on the length of the extension that may be granted but the matter will be adjourned to the end of the timeline. Counsel may arrange to have the matter brought forward if it is ready to proceed prior to the end of the timeline.

Once a matter has reached the end of its timeline the matter must be scheduled for preliminary hearing, trial or disposition. If this does not occur, the matter will be adjourned to the next Administrative Docket to appear before a judge.

Limit on Remands before PTC

A maximum of five remands will be allowed on the PTC Docket. If additional remands are requested, the matter must go to the Administrative Court.

Pre-Sentence Reports (PSR)

Accused will be remanded to the PTC dockets pending the preparation of a Pre-Sentence Report (PSR). The PSR must be provided to the court and a disposition date arranged no later than 30 days from the date the plea is entered where an accused is in custody or 60 days if the accused is not in custody.

UNREPRESENTED ACCUSED

If an accused is not represented by counsel at the first appearance it is expected that;

- the PTC will advise the accused of the right to counsel;
- the accused will meet with a Legal Aid representative and will be granted a remand to allow processing of the Legal Aid application;

- if the accused wants to retain private bar counsel, the PTC will allow a remand for counsel to be consulted;
- if the accused does not wish to obtain counsel, the PTC will review the Trial Readiness or Pre-Plea Comprehension form and remand the matter to the appropriate Assignment, Plea or Disposition Court.
- If the accused is in custody, the PTC is responsible to contact all unrepresented accused either by telephone or in person to ensure that all timelines are met. Arrangements will be made to have the accused appear before a Provincial Court Judge at any point that the unrepresented accused requests a court appearance or the PTC has concerns with respect to how the case is proceeding.
- If the accused is on the bail triage docket and still without counsel on the 2nd & 3rd appearance, the PTC will personally contact the accused to confirm that the accused is aware of their right to counsel and of the availability of Legal Aid Duty Counsel. If after speaking to the accused, the PTC feels that the matter should appear before the Bail Court Judge or at the request of the accused, they can transfer the accused directly to the bail courtroom or ensure arrangements are made to have the accused appear before a Judicial Justice of the Peace.

PRELIMINARY HEARING & TRIAL DATES

When a matter is ready to proceed to Preliminary Hearing or Trial, the following documents must be filed with the Court when the date is set:

- 1) Certificate of Trial Readiness;
- 2) Trial Slip;
- 3) Forms A & B.

A pre-trial hearing must be arranged prior to setting a date as follows:

- 1) When the hearing or trial is set for two days or more;
- 2) Where either party has requested a focus hearing
- 3) At the discretion of the Court based on an application by the accused or the Crown.

CONSENT REMANDS

When both the Crown and Defence agree to a remand, either party may inform the PTC of the request by email and no appearance by counsel is required.

Consent Remands will not be allowed in the following two situations:

- 1) When there are personal appearance requirements for an accused;
or
- 2) When the remand date does not comply with the timeline requirements.

NON-APPEARANCE BY AN ACCUSED

If an accused does not appear on the PTC's out of custody docket, the non-appearance will be noted and the matter may be remanded for up to two weeks on the PTCs docket. If the accused still does not appear on the next remand, the PTC will issue a warrant for the arrest of the accused.

At the crown's request, the PTC may issue the warrant immediately. If the PTC does not issue the warrant immediately, the crown may request the matter be brought forward for a Judge to review or may ask that the charge be treated as a contested adjournment.

If the accused does appear, the matter will proceed as usual. The timeline requirements will not be suspended during this period.

NON-APPEARANCE BY COUNSEL

If counsel does not appear on a matter that is on the PTC custody docket and there has been no prior request for a remand made to the PTC or the Crown, the PTC will adjourn the matter four weeks or to the end of the timeline if that is within the four week period. The PTC will advise counsel of the non-appearance and the remand date in writing. If there is no appearance on the subsequent date, the PTC will adjourn the matter to the next Administrative Court and inform the accused.

RE-ARREST

Breach & Fail to Appear Charges

An accused who is arrested on a breach or fail to appear charge and subsequently appears on the PTC docket without new substantive charges

will be reinserted, with respect to the administrative timelines, at the same point the Accused was immediately prior to the arrest. If the Accused had reached the end of the timeline at the time of arrest, one last remand will be permitted before a plea is required.

New Substantive Charges

An accused who is arrested on a new substantive charge will be assigned a timeline for the new matters provided the need for a new timeline is drawn to the attention of the PTC. The timeline on the existing charges will not be affected by the new timeline.

GUILTY PLEAS

In Custody

Counsel will advise the PTC when a matter is ready for sentencing and confirm that the accused is required in person or advise if video link can be used. Should defence counsel opt to proceed via video link, the sentencing Judge reserves the right to have the accused brought before him/her in person for the sentencing hearing.

Out of Custody

Counsel will advise the PTC when a matter is ready for sentencing. The matter will be adjourned to an out of custody disposition Court as arranged by Crown and Defence. If counsel cannot agree to a sentencing date, the matter will be adjourned to an Administrative or a Motions Court for a contested adjournment request.

When an unrepresented person wishes to plead guilty, the PTC will ensure that the accused is aware of all of the consequences of such an action. The Pre-Plea Comprehension Inquiry Form [see attached Appendix “B”] will be completed and signed by the accused, and the matter will be adjourned to an out of custody disposition Court. If the accused wants to plead guilty immediately and the Crown is ready to proceed, the matter will be transferred to a same day plea Court for sentencing.

Reports

Once a guilty plea has been entered a matter may return to the PTC docket pending the preparation of victim impact statements and reports required for sentencing purposes.

SENIORITY OF COUNSEL

When custody matters are being transferred from a PTC Docket to appear before a Judge via video link on the same day, the PTC must provide an appearance list to the Institution 15 minutes before the commencement of Court. The PTC will give priority to Senior Counsel when the list is created. Any subsequent matters transferred to Court after the initial call will be done on a first come first serve basis.

Custody dispositions arranged in advance for a video appearance in Courtroom 401 will be on the basis of time slots. Prior to the sentencing date, the timeslot may be adjusted based on agreement between Crown and Defence and subject to availability. On the sentencing date, the timeslot may only be adjusted with the prior permission of the presiding judge.

ADMINISTRATIVE COURT

When a matter has reached the end of its timeline the PTC no longer has jurisdiction over the matter. The PTC will adjourn the matter to the next Administrative Court presided over by a judge. The PTC may at any time refer a matter to the Administrative Court if concerns arise regarding the progress of the matter, the length of a consent extension or due to any other reasonable concern. The judge may require a plea to be entered and dates set, grant a further remand to an Administrative Court or extend the timeline and refer the matter back to the PTC for further monitoring.

Appendix "A" – CROWN REQUEST – STAY OF PROCEEDINGS FORM

CROWN REQUEST - STAY OF PROCEEDINGS

TO BE
COMPLETED
BY CROWN

DATE: _____

NAME OF ACCUSED: _____

DATE OF BIRTH: _____

POLICE REPORT #: _____

CHARGES: _____

COURT POCKET #: _____

STATUS OF CASE:

ACCUSED IN CUSTODY: YES NO

CURRENT REMAND DATE: _____ Courtroom _____

408 YORK AVENUE OR

I HEREBY DIRECT THAT A STAY OF PROCEEDINGS BE ENTERED FORTHWITH, ON THE RECORD OF PROCEEDINGS OF THE ABOVE NOTED CHARGES.

CROWN: _____

SIGNATURE: _____

CROWN SUPPORT CONTACT _____

PHONE NUMBER _____

PRE-PLEA COMPREHENSION INQUIRY FORM

I, _____, hereby acknowledge that:

- 1. I understand that I have the right to legal counsel and wish to waive that right and represent myself in court.**
- 2. I intend to enter a plea of Guilty.**
- 3. No one is forcing me to plead guilty.**
- 4. I agree that I did the offence(s).**
- 5. By pleading guilty, I know that the Crown will not have to prove the case against me.**
- 6. I understand I will now be sentenced by a Judge and the Judge does not have to follow any agreement made between the Crown Prosecutor and myself.**

Date: _____

Signature: _____

Witness: _____

Name of Witness: _____

(please print)

Designated Offences

Homicides and fatalities
Child Pornography
Attempt Murder
Aggravated sexual assault & sexual aslt with weapon
Aggravated assault
Robbery with firearm
Robbery
Sexual Assault cause bodily harm
Break and Enter – 3 or more
Break and Enter involving a Home Invasion
Impaired cause bodily harm
Criminal Negligence cause bodily harm
Drive Dangerous cause bodily harm
Extortion
Hostage Taking
Incest
Perjury
All firearms and explosives offences
Overcoming resistance - s. 246
Administering Noxious Thing with intent
Criminal harassment
Mischief endangering life
Arson
CDSA Project files as identified by the Federal Crown