

**CRIMINAL DIVISION STANDING ORDER OF AUGUST 25, 2021, AMENDING
ORDER OF AUGUST 11, 2021 ESTABLISHING PROTOCOLS, EFFECTIVE
SEPTEMBER 7, 2021, FOR THE FELONY CALENDARS**

WHEREAS, during the COVID-19 public health emergency, as first declared by the Mayor of the District of Columbia on March 11, 2020, the DC Courts substantially modified operations in order to ensure the safety and well-being of litigants, counsel, other members of the public and court personnel, pursuant to the March 18, 2020 Order Regarding Operation of the D.C Courts during the Coronavirus Emergency issued by the Joint Committee on Judicial Administration, and the March 15, 2020 Order and successive orders issued by the Chief Judge regarding Superior Court operations, to include the Criminal Division; and

WHEREAS, the Criminal Division remains committed to protecting the health and safety of defendants, witnesses, victims, counsel, court personnel, jurors and other members of the public; and

WHEREAS, pretrial and probation show cause hearings have proceeded remotely or in-person, opportunities have been extended for defendants on release in felony matters to appear remotely before the court upon their request, and all other non-detained felony matters have been continued; and

WHEREAS, detained defendants have appeared remotely before the court for sentencings, bond review, plea, motions and other hearings upon their request, and in-person for preliminary hearings, motion hearings and trial; and

WHEREAS, scheduling or trial readiness hearings have been held or are scheduled in all detained cases, with the presence of the defendant waived; and

WHEREAS, pursuant to Superior Court Rules of Criminal Procedure 62(d), currently in effect until November 21, 2021, and which may be extended, a defendant may orally consent to appear by telephone or videoconference in felony cases, including for arraignment, plea and sentencing; and

WHEREAS, thousands of felony cases are currently pending; and

WHEREAS, the D.C. Superior Court Criminal Division Felony Calendars will resume full operation on September 7, 2021 before the assigned calendar judge in the physical courtroom;

IT IS HEREBY ORDERED that all non-detained and detained cases will proceed on the assigned Felony Calendars, which will operate both remotely and in-person, in the designated courtroom reflected in the 2021 Criminal Division Assignments; and it is

FURTHER ORDERED that the parties shall make every effort to comply with the following expectations in advance of all pre-sentencing hearings:

At the earliest possible opportunity and no later than two weeks days prior to the scheduled hearing date, **GOVERNMENT COUNSEL** shall:

- 1) provide defense counsel all available discovery to which they will be entitled pursuant to Superior Court of Criminal Procedure 16 and any additional disclosures required pursuant to *Brady*, regardless of whether the defendant has yet to be arraigned;
- 2) if in its discretion it determines that a plea or diversion offer is to be extended, provide the terms of such offer to defense counsel;
- 3) if the case was previously set for sentencing and continued due to the declaration of judicial emergency, or upon notification that the defendant will be accepting the plea offer, prepare for sentencing, including making best efforts to satisfy any obligation pursuant to D.C. Code § 23-1902 *Notice to crime victims* and 18 U.S.C. § 3771.

In addition to the foregoing, the **GOVERNMENT** is strongly encouraged to review each case in advance of the scheduled hearing and reevaluate the viability of the continued prosecution.

At the earliest possible opportunity and no later than one week prior to the scheduled hearing date, **DEFENSE COUNSEL** shall:

- 1) make best efforts to establish contact with the defendant to inform them of their upcoming court date and provide remote log in information to defendants on release; if a defendant is unable to appear remotely, counsel may refer them to one of the DC Courts remote access hearing sites:
<https://www.dccourts.gov/sites/default/files/Remote-Hearing-Sites-Tip-Sheet-3.pdf>.
- 2) communicate the terms of any plea or diversion offer to the defendant;
- 3) inform government counsel if additional discovery is being requested and/or whether the defendant wishes to accept the plea or diversion offer;
- 4) if the case was previously set for sentencing and continued due to the declaration of judicial emergency, or if the defendant will be accepting the plea offer and the parties are prepared to proceed immediately to sentencing, prepare for sentencing, including submitting proposed findings if sentencing under the Youth Rehabilitation Act is being sought.

It is **FURTHER ORDERED** that motions, pretrial reports of noncompliance and probation violation reports shall continue to be filed with the assigned case judge; and it is

FURTHER ORDERED that if parties are appearing remotely, they should make every effort to submit fully executed disposition paperwork to the calendar judge's chambers 24 hours in advance of the hearing. However, if one or more parties are unable to sign the disposition

paperwork for any reason, parties shall submit the unexecuted documents and the Court shall obtain remote authorization from each party to record their electronic signature on the paperwork; and it is

FURTHER ORDERED that the parties shall appear before court as follows:

Cases involving defendants on release:

Unless ordered by the court to appear in-person, non-detained defendants may appear by video to the extent possible and, if unable to appear by video, by telephone.

If the defendant will be appearing remotely, counsel (both government and defense), may also appear by video.

If the defendant will be appearing in-person, counsel (both government and defense), shall also appear in-person.

Cases involving defendants in the custody of the Department of Corrections (DC Jail):

Detained defendants will appear in person before the court, unless the defendant waives their presence at the hearing.

Cases involving defendants in the custody of the Department of Youth Rehabilitation Services (Youth Services Center or New Beginnings):

Detained DYRS defendants may continue to appear remotely from the DYRS facility for all hearings, with the exception of trial and preliminary hearing.

Cases involving defendants in the custody of the Bureau of Prisons (BOP):

Detained BOP defendants may continue to appear remotely from the BOP facility for all hearings, with the exception of trial.

In all detained cases, if the defendant will be appearing remotely, or has waived their appearance, counsel (both government and defense), may appear by video.

If the defendant does not consent to appearing remotely and will be appearing in-person, counsel (both government and defense), shall also appear in-person.

Cases involving defendants at St. Elizabeths Hospital:

Defendants at St. Elizabeths Hospital may continue to appear remotely for all hearings, with the exception of trial, according to the remote hearing profile established for the DBH Inpatient Calendar;

<https://dccourts.webex.com/meet/ctbDBH> or 179 174 2726.

If the defendant will be appearing remotely, counsel (both government and defense), may also appear by video.

If the defendant does not consent to appearing remotely and will be appearing in-person, counsel (both government and defense), shall also appear in-person.

Pretrial Services and Court Services and Offender Supervision Agency representatives may appear in person, but are encouraged to continue to appear remotely by video or telephone if possible.

Victims of crime may appear in person, but are encouraged to continue to appear remotely by video or telephone if possible.

Members of the public may attend in person, subject to capacity limitations, but are encouraged to continue to observe court proceedings remotely.

IT IS FURTHER ORDERED that Mental Health Community Court and the Superior Court Drug Intervention Program (Drug Court) will proceed entirely remotely and all parties must appear by video to the extent possible and, if unable to appear by video, by telephone; <https://dccourts.webex.com/meet/ctb111> or 129 350 4013.¹ If a defendant is unable to appear remotely, counsel must contact the judge assigned to the calendar to request that the case be transferred to the appropriate felony calendar for an in-person hearing or other arrangements made to facilitate an in-person appearance.

The court expresses its appreciation to counsel in advance for compliance with this order and cooperation during the Criminal Division's expansion of Felony operations.

SO ORDERED, this 25th day of August, 2021.



Juliet J. McKenna
Presiding Judge, Criminal Division



Danya A. Dayson
Deputy Presiding Judge, Criminal Division

¹ Telephone users can access all remote hearings by calling: 202-860-2110 (local) 844-992-4726 (toll free) and typing in the Meeting ID associated with that courtroom.