

**CRIMINAL DIVISION STANDING ORDER OF NOVEMBER 8, 2021, AMENDING  
PRIOR ORDERS, ESTABLISHING PROTOCOLS 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 D.C. 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**, 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**, unless otherwise ordered by the Court, all deadlines and time limits in statutes, court rules, and standing and other orders issued by the Court that would otherwise expire are suspended, tolled and extended during the period pending further order of the Court. This includes, but is not limited to, timelines for detention and preliminary hearings pursuant to Rule 5.1 and D.C. Code §§ 23-1322(a) and (b), as well as indictment deadlines and trial deadlines, including deadlines pursuant to Rule 48(c)(1), D.C. Code §§ 23-102, 23-1322(h), 24-801, and 24-531.01 et. seq.; and

**WHEREAS**, prior to September 7, 2021, detained defendants appeared remotely before the Court for sentencings, bond review, plea, motions and other hearings upon their request, and in-person for detention and preliminary hearings, motion hearings and trial; and

**WHEREAS**, the D.C. Superior Court Criminal Division Felony Calendars resumed full operation on September 7, 2021 with parties appearing before the assigned calendar judge in the physical courtroom or, with the permission of the Court and the defendant's consent, remotely or with the defendant's presence waived; and

**WHEREAS**, thousands of felony cases, both detained and non-detained, are currently pending, far exceeding the number of pending cases prior to the COVID-19 pandemic; and

**WHEREAS**, it is necessary to set forth expectations for both **GOVERNMENT** and **DEFENSE COUNSEL** in order to provide for the just and timely determination of every criminal proceeding and reduce further unjustifiable delay;

**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 nothing in this order impacts the government's obligation to provide exculpatory evidence in a timely fashion in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny; and it is

**FURTHER ORDERED** that, nothing in this order precludes the government from seeking a protective order prior to disclosure if it deems necessary. If parties cannot agree to the terms of a protective order, the government shall file a motion requesting a protective order consistent with the below timelines and otherwise disclose materials for which no such order is being requested; and it is

**FURTHER ORDERED** that, absent compelling and extraordinary circumstances, the parties shall make best efforts to comply with the following expectations:

**GOVERNMENT COUNSEL shall:**

- 1) Five business days following the scheduling of a detained preliminary hearing, or three business days prior to a detained preliminary hearing set at least five days in advance, whichever is earlier, provide defense counsel with all *Jencks* material for the identified witness, any identified exhibits it plans to rely upon at the hearing, and the terms of any pre-preliminary hearing plea if in its discretion one is to be offered; to the extent that the witness has not been determined, the initial police paperwork shall be provided.
- 2) Two weeks following the scheduling of a non-detained preliminary hearing, or two weeks prior to a non-detained preliminary hearing, whichever is later, provide defense counsel with all *Jencks* material for the identified witness, any identified exhibits it plans to rely upon at the hearing, and the terms of any pre-preliminary hearing plea if in its discretion one is to be offered; to the extent that the witness has not been determined, the initial police paperwork shall be provided.
- 3) In all detained cases that have been pending for nine months or longer, provide all available discovery to which the defense will be entitled pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure;

- 4) In all cases in which the initial order of detention was entered less than nine months before the issuance of this order, provide all available discovery to which the defense will be entitled pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure at the earliest possible opportunity after a defendant's request and in no event later than 30 days after an initial order of detention entered under D.C. Code §§ 23-1322(b) or 23-1329(b) or 180 days after an initial order of detention entered under D.C. Code § 23-1325(a). The same time periods shall apply in all cases in which the initial order of detention is entered after the issuance of this order. If the time period for providing discovery required by this paragraph has already lapsed, then discovery shall be provided within 30 days of the issuance of this order;<sup>1</sup>
- 5) At the earliest possible opportunity, and no later than 30 days following the initial order of detention pursuant to D.C. Code §§ 23-1322(b) or 23-1329(b), and no later than 180 days following the initial order of detention pursuant to D.C. Code § 23-1325(a), 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;
- 6) At the earliest possible opportunity, and no later than three weeks prior to a scheduled hearing in a non-detained case, 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;
- 7) 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 and the parties are prepared to proceed immediately to sentencing, 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.

Paragraphs #1-3 will take effect two weeks from the issuance of this order. Paragraph 4 will take effect four weeks from the issuance of this order.

In addition to the foregoing, and subject to inquiry by the Court, the **GOVERNMENT** should:

- 1) review each case in advance of the scheduled hearing and reevaluate the viability of the continued prosecution;

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<sup>1</sup> As it relates to the disclosure of materials pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure, as described in this paragraph, in a case in which the defendant is held pursuant to D.C. Code § 23-1325(a), a temporary protective order shall be entered by the Court if one is requested by the government. Within nine months following the initial order of detention, the government shall notify defense counsel and the Court if it is seeking an extension of the temporary protective order in whole or in part. The temporary protective order shall remain in effect until a consent protective order is entered or until the Court rules upon an extension of the order if the parties are unable to reach resolution. The temporary protective order will automatically expire nine months from the date of the order of detention unless the government seeks to extend the temporary protective order within the nine months. Further, the temporary protective order will no longer apply to Rule 16 discovery not identified if the government seeks only a partial extension of the temporary protective order.

- 2) five business days following the scheduling of a detained preliminary hearing, or three business days prior to a detained preliminary hearing set at least five days in advance, whichever is earlier, provide defense counsel with the defendant's statement and any additional video evidence referenced in the arrest warrant or Gerstein affidavit;
- 3) in all detained cases that have been pending nine months or longer, upon a defendant's request, within 45 days following the return of an indictment, provide all Jencks, to include grand jury testimony and recorded witness interviews or transcripts of such interviews.

**DEFENSE COUNSEL** shall:

- 1) At the earliest possible opportunity and no later than two weeks prior to the scheduled hearing date, make best efforts to establish contact with the defendant to inform them of their upcoming court date and, for defendants on release who will be appearing remotely, provide remote log in information and information about community based Remote Hearing Sites.<sup>2</sup> If counsel does not have contact information for the defendant, they should contact Pretrial Services Agency to determine if it has a current telephone number, address or email for the defendant and/or provide a phone number at which counsel can be reached;
- 2) At the earliest possible opportunity and no later than one week prior to the scheduled hearing date, 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 prior to the scheduled hearing;
- 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

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<sup>2</sup> <https://www.dccourts.gov/sites/default/files/Remote-Hearing-Sites-Tip-Sheet-3.pdf>.

**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.<sup>3</sup>

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

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<sup>3</sup> <https://dccourts.webex.com/meet/ctbDBH> or 179 174 2726.

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.<sup>4</sup> 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.

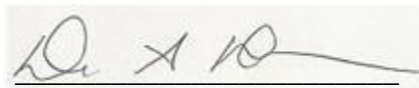
**IT IS FURTHER ORDERED** that this Standing Order may be modified or rescinded at any time by successor Presiding Judges of the Criminal Division, or by the Chief Judge, as necessary to carry out the business of the Criminal Division and of the D.C. Superior Court, and otherwise shall remain in effect until July 15, 2022.

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

**SO ORDERED**, this 8th day of November, 2021.



Juliet J. McKenna  
Presiding Judge, Criminal Division



Danya A. Dayson  
Deputy Presiding Judge, Criminal Division

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<sup>4</sup> 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.