

SUPERIOR COURT

SUSSEX COUNTY

CRIMINAL CASE

MANAGEMENT PLAN

The following Plan is adopted by the Superior Court of the State of Delaware in order to ensure the orderly and prompt disposition of criminal cases in Sussex County.

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Exhibit A - Continuance Form

INTRODUCTION

The Superior Court in Sussex County processes cases on three different case tracks. Primary responsibility for track assignment will rest with the Attorney General. All tracks will focus on improving case processing time, with two of the tracks being tied to the range of treatment and case management services for offenders who are using illicit drugs and who can benefit from prison or community-based treatment.

TRACK 1 - PROBATIONERS

All defendants who are currently serving a probationary sentence from Sussex County Superior Court, and then are arrested on a new drug offense, are subject to Track 1. (Other probations who manifest a drug problem may be designated for this track by the Attorney General or the Court).

A violation hearing will be scheduled within 21 days of arrest to attempt to resolve both the violation and new charge simultaneously. If both are resolved by plea agreement then an appropriate sentence and treatment plan will be established. The case will be monitored actively by the Track I judge. If no agreement is reached, the violation allegations will be heard promptly and the new drug charges will be moved to the Trial Track III and promptly scheduled. Deferring action on the violation of probation until after disposition of the new charges will no longer occur.

Probation/Pretrial Services and the Attorney General will rapidly identify these defendants as Track I appropriate and notify the Drug Court Case Manager who will then schedule the violation hearing. Notice will immediately be given by the Drug Court Case Manager to the attorneys, defendant, Medical Examiner and the Treatment Access Center (TASC). TASC will conduct a substance abuse assessment and submit a preliminary treatment recommendation to the Drug Court Coordinator for distribution to the attorneys prior to the violation hearing. TASC will be responsible for program placement and monitoring upon the imposition of a sanctions-with-treatment sentence. The Attorney General will communicate with the Medical Examiner to expedite the preparation of the Controlled Substance Laboratory Report.

This is not a diversion program. Its goal is to provide efficient case management of defendants' violation of probation hearings which are triggered by a new drug offense. The goal is to offer a forum in which both the violation of probation and the new charge promptly may be resolved. Since this track includes a defendant on probation to Sussex County Superior Court for any conviction together with any new drug offense, it must be

recognized that this track will include serious offenders. Therefore, if resolved by either a finding of a violation of probation or a conviction on the new charge, the Court must balance the need for substance abuse treatment with the traditional sentencing considerations, including the safety of the community.

TRACK II - DIVERSION

This track includes those defendants arrested for drug offenses with no, or minimal prior felony or drug convictions who are charged with offenses not carrying a mandatory sentence. These defendants are those likely to be placed in intermediate sanctions; that is they would not usually be considered for Level V (incarceration). They will be designated as Track II offenders by the Attorney General, who will decide that any offer of diversion or a plea with probation is forthcoming.

A diversionary track has been established for offenders meeting the above criteria. The Attorney General will decide that for certain defendants an expedited decision with treatment and control is preferable to trial. Diverted and supervised offenders who are ordered into urine monitoring or treatment may keep their drivers licenses and may avoid a judgment of guilty if conditions are met. To participate, the offender must waive a speedy trial, a jury trial, and agree to trial upon stipulated facts in the event the individual is terminated from the program.

The Attorney General will rapidly identify these defendants as Track II appropriate and notify the Drug Court Case Manager who will schedule the initial proceedings within 30 days of arrest and coordinate the accomplishment of his/her substance abuse assessment and recommendation together with the treatment providers. Notice immediately will be given by the Drug Court Case Manager to the attorneys, defendant, Medical Examiner and treatment providers. The substance abuse assessment and preliminary treatment recommendation shall be distributed to the Court, the attorney and the provider.

The Attorney General will communicate with the Medical Examiner to expedite the preparation of the Controlled Substance Laboratory Report.

This is the diversion program and is designed primarily to provide substance abuse treatment to help individuals get off the drug path. It has a “carrot” and “stick” approach. The “carrot” is if the person is successful, there will be no loss of license or conviction. The “stick” in the program is monitoring which is tougher than probation and if unsuccessful, the defendant faces a conviction. With a conviction, the Court has traditional sentencing options, including incarceration and treatment.

TRACK III - TRIAL TRACK

Arraignment

Prior to receiving a case review date, the defendant will be required to have counsel of record established by the filing of a Rule 10(c) form or the entry of an appearance in open court or a determination of the defendant's pro se status. The Prothonotary shall include a case review date on the 10 (c) form. Arraignment shall be scheduled within 10 days of indictment or the filing of an information. Case review shall be scheduled within 28 days of arraignment.

Any conflicts regarding representation and waiver thereof should be determined by the time of arraignment. The Public Defender's Office and contract counsel shall communicate and give notice of conflicts as quickly as possible.

Discovery

Automatic discovery and Rule 16 discovery needs to be exchanged before case review so that case review will be meaningful. Defense counsel must have the opportunity to digest the discovery materials before entering into plea negotiations. The State is expected to provide discovery at least one week prior to the case review. [Also see Case Review.]

Case Review

Every case is scheduled for a case review unless disposed of earlier. Case reviews will be scheduled at 9:00 a.m. on Mondays of the 1st and 3rd weeks of the month.

One week prior to the Case Review, the State shall have provided all automatic discovery or to have responded to written Rule 16 requests and Brady requests made by the defendant. Also, one week before the Case Review, the State shall provide a substantive plea offer to defense counsel, who shall inform the defendant of the offer. The Court expects the Case Review to be utilized by counsel to discuss the status of the case with the client and the plea offer that has been tendered by the Attorney General.

Providing timely, substantive and realistic plea agreements, and communicating these offers to defendants prior to a case review is critical to any effective case management effort. This can only be accomplished if discovery and plea offers are communicated to defense counsel sufficiently before case review so as to permit defense counsel to digest the information and communicate with the client. It is recommended that the appropriate management oversight and review of systems be implemented in both the Attorney General and Public Defender offices to ensure compliance with the Court's expectations.

If parties cannot agree to a plea, counsel for the parties are expected to set forth the circumstances pertaining to any plea offer made by the State and address the following:

- Status of discovery; the Court recognizes that expert witness discovery cannot normally be completed within the timeline provided above but the Court directs that the parties cooperate with this exchange and report the status of same at Case Review and keep the Court current of any problems which may impact the trial date.
- Any particular or unique problems that may require judicial assistance;
- Any outstanding motions that need to be addressed.

Where necessary, the Case Review Judge will establish discovery deadlines and issue case management orders. When possible, written confirmation to counsel of the oral order should be prepared by the judge and filed with the Prothonotary.

If the matter is not resolved at Case Review, the defendant will be given notice to appear for a Final Case Review and Trial, and will be advised to come to the Final Case Review prepared to make final decisions about the case, since after the Final Case Review significant limitations will be placed on what plea offers will be accepted by the Court. The Final Case Review and Trial will be scheduled within 90 days of indictment. Except for good cause shown any request for continuance shall be filed within 14 days of the Initial Case Review.

Pretrial Motions

Pretrial motions, including motions to suppress, and all motions under Rule 12, 14, 16, and 41 of the Superior Court Criminal Rules must be filed within 10 days following Initial Case Review unless otherwise ordered by the Court. It is necessary that these motions be timely filed to allow the scheduling of any evidentiary hearings prior to Final Case Review. The motion must state with particularity the specific legal and factual grounds counsel in good faith believe support the motion, as well as any controlling legal authorities. Failure to comply with this requirement may result in the motion being denied without further hearing or argument. In addition, any applicable motion filed after the deadline must include a motion for leave to file out of time, which must specifically set forth the justification for the delay. The Court intends to resolve all pretrial motions before the Final Case Review.

All routine criminal motions filed by 12 noon on Wednesday will be placed on the upcoming Friday's motion calendar before the Criminal Assignment Judge.

Final Case Review

This is the final courtroom event prior to Trial. The Court expects counsel to be thoroughly familiar with their case, to have reviewed with the clients and victims the plea offer and the consequences of accepting or rejecting the plea. Counsel for both sides shall have thoroughly discussed the case and have made a good faith effort to resolve the matter without the necessity of trial.

If the assigned deputy cannot participate at Final Case Review he/she is expected to (a) engage defense counsel in plea negotiations before Final Case Review (likewise as to defense counsel); and (b) delegate authority to another deputy so that negotiations may continue at Final Case Review in an effort to resolve the case. This applies to Case Review as well as Final Case Review.

At the Final Case Review, counsel shall advise the Court of the following:

1. The status of plea negotiations.
2. Any evidentiary problems that either side reasonably anticipates will arise during the trial;
3. Any changes in the scheduled number of trial days and any anticipated witness problems.

If the case is not resolved, the judge will personally address the defendant in open court and advise of the following:

1. Absent the exceptional and unforeseen circumstances and for good cause shown, the Court will not accept a plea bargain after this date.
2. If the defendant desires to enter a plea on the day of trial, the Court will accept a plea only to all charges set forth in the indictment/information with no limitation placed upon the Court regarding sentencing.

Trial

To minimize delaying jury selection, a calendar call is done the morning of trial at 9:00 a.m. to handle the remaining trials which are scheduled for that day. It is expected that all trials which are scheduled for jury selection will begin promptly. Counsel are expected to be in the assigned courtroom for the call and at the designated courtroom to proceed with jury selection on time.

Counsel must immediately notify the Court about any issues that might delay jury

selection. Failure to notify the Court as required may result in the Court's deciding that the issue has been waived. While awaiting jury selection, counsel must keep the bailiffs advised as to counsel's whereabouts.

The Court expects cases that have reached this point to be ready for trial, and counsel should be prepared to proceed and should not expect a plea agreement to be accepted by the Court at this time.

The Criminal Assignment Judge shall ensure that all available resources are used to try all cases assigned for trial that week including available judges.

Sentencing

Sentencing shall be scheduled on a Friday calendar within six weeks of conviction.

Violation of Probation Hearings

Violation of Probation Hearings are to be assigned to the first available opening on the first available calendar.

Emergency Capias/Administrative Warrants

Emergency Capiases/Administrative Warrants will continue to have priority and be scheduled within 10 working days of being filed with this Court.

Motions Calendar

A motion calendar will be handled on Fridays at 11:00 a.m. by the Criminal Office Judge. All miscellaneous motions will be addressed at that time. Motions without opposition as noted on the motion by both counsel will be sent directly to the Criminal Office Judge for signature without hearing. (Requests for continuances are not to be accepted under this procedure; see below.) Motions for modification of a sentence will be assigned to the sentencing judge and considered by that judge without presentation, hearing or argument unless ordered by the Court pursuant to Rule 35 (b).

Pleas by Appointment

Any pleas which are ready prior to next scheduled event shall be scheduled with the Prothonotary's Office. Attorneys are encouraged to use these times to minimize the delay to their clients and themselves and assist in relieving court congestion and on those occasions when the attorney has a scheduling conflict with a scheduled case review or final case review.

Continuances and Rescheduling

All requests for continuances of case reviews, diversions, trials, and sentencings must be set forth in writing using the Court's approved form and to the attention of the scheduling clerk. Only if she/he is absent from the office should counsel file such a request with chambers. No letter requests will be accepted. The forms are to be filed with the Prothonotary's Office. The Criminal Assignment Judge will rule on the request. See Exhibit A.

Special Assignment Cases

A request to specially assign a criminal case outside of the procedures established by this plan must be directed to the President Judge. The judge assigned to handle that matter will attempt to schedule the trial during the time he or she is scheduled to be trial judge in rotation schedule in coordination with the Prothonotary's Office.

Scheduling Goals and Criteria

At least 90% of all criminal cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 120 days from the date of indictment/information, 98% within 180 days and 100% within one year. The following time periods shall not be included: (1) For all cases in which a Capias was ordered, the time between the date the Capias was issued and the date the Capias was executed; (2) For all cases in which a presentence investigation has been ordered by the court, the time between the ordering of the presentence investigation and sentencing; (3) For all nolle prosequi, the time between the scheduled trial date and the filing of the nolle prosequi; (4) For all cases in which a mental examination has been ordered by the court, the time between the date of said order and the receipt by the court of the Examination/Evaluation report; (5) For all cases in which a defendant has been evaluated as incompetent to stand trial, the time during which the defendant remains incompetent; and (6) All murder in the first degree cases shall be tried and/or otherwise adjudicated within one year from the date of indictment.

Duties of the Criminal Assignment Judge and Criminal Backup Judge

1. Handles all Criminal Trial Calendars
2. Handles all Case Review/Final Case Review Calendars
3. Handles all Criminal Motion Calendars

4. Fees for Professional Services
5. Criminal Continuance Requests
6. Operation Safe Streets
7. Grand Jury
8. Signs Administrative Warrants
9. Search Warrant - A Deputy Attorney General shall accompany any law enforcement officer before a Superior Court Judge
10. Capias/Bonds if Commissioner unavailable.

**THE ABOVE PLAN IS HEREBY ADOPTED BY THE
PRESIDENT JUDGE OF THE SUPERIOR COURT OF THE STATE
OF DELAWARE IN SUSSEX COUNTY
THIS 21st DAY OF JANUARY, 2002**

**/s/ Henry duPont Ridgely
President Judge**

**/s/ T. Henley Graves
Resident Judge**

**/s/ Richard F. Stokes
Judge**

**/s/ E. Scott Bradley
Judge**