

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

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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 an appearance before a Judge.

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

- 1) Contested Motions;
- 2) Bail applications;
- 3) Contested bail variations;
- 4) Guilty pleas;
- 5) Hearings/trials;
- 6) Sentencings.

APPLICATION OF PROTOCOL

This Protocol applies to all criminal prosecutions involving adults appearing in the Provincial Court – Winnipeg Centre.

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) An accused person has been advised of their right to have a trial in English or French;
- 3) 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.
- 4) Any bail variation issues have been addressed;
- 5) The Crown has reviewed the evidence and considered its position;
- 6) Meaningful discussions between counsel have occurred;
- 7) Counselling or diversion issues have been addressed;
- 8) A pre-plea comprehension inquiry has been conducted.

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

- 1) Adjourn matters as required with consent of the Crown, provided the matter has not exceeded its timeline or number of permitted remands and the matter does not involve an allegation of breach of a Conditional Sentence Order;
- 2) Endorse a stay of proceedings upon being provided with a Crown Stay of Proceedings Form (see attached Appendix "A"); (updated SOP form)
- 3) Issue, cancel or hold warrants;
- 4) Allow counsel to withdraw in the following circumstances:
 - a) if counsel seeking to become counsel of record is present and, if the matter is scheduled for trial or preliminary hearing, new counsel is available and prepared to proceed on the date scheduled for hearing; or
 - b) if the PTC issues a warrant for arrest for the accused and counsel asks to be removed as counsel of record;
 - c) if the Accused advises he intends to represent himself and does not intend to make further efforts to retain counsel;
- 5) Order forfeiture of items seized pursuant to charges laid under the CDSA with the consent of both crown and defence;
- 6) Adjourn a matter to the Queen's Bench Assignment Court if the accused appears on an indictable offence, other than an offence listed in section 469 of the *Criminal Code*, the offence is not one over which a Provincial Judge has absolute jurisdiction under section 553 and neither the accused nor the Crown has requested a preliminary inquiry.

PRE-TRIAL COORDINATOR'S DOCKET

The PTCs, who are bound by certain administrative timelines, will oversee the PTC docket. Between the time a charge is laid and a matter is ready to proceed before a Judge for a meaningful event, the matter will appear on a PTC docket unless the matter involves an

allegation of breach of a Conditional Sentence Order in which case the matter will go to the Custody Administrative Docket even if the accused is not in custody.

ADMINISTRATIVE TIMELINES

The PTC has no authority to deviate from the timelines established by this Protocol. If the timeline for a matter expires or the maximum number of remands is reached, the matter must be set for sentencing, preliminary inquiry or trial unless one of the following exceptions applies:

- 1) The accused is in custody;
- 2) The accused is co-accused with an accused who is in custody and the Crown consents to keeping the matters together;
- 3) The accused is applying for or has been accepted into Drug Treatment Court and the Crown consents to adjourning the matter to an Administrative Court;
- 4) The accused is co-accused with an accused who is applying for or has been accepted into Drug Treatment Court and the Crown consents to adjourning the matter to an Administrative Court;
- 5) The drug that is the subject matter of the charges is being tested at the request of the Crown;
- 6) A search warrant relating to the charges is being vetted at the request of the Crown;

In the case of an exception, the matter will be adjourned to the next appropriately designated Administrative Court¹;

Custody PTC Docket

Where the accused has been denied bail, does not intend to apply for bail or the matter has appeared in Bail Court or on the Bail Triage Docket for 5 days without a bail application the matter will next appear as follows:

- i. Provincial adult matters - this docket is held every Monday and Friday starting at 9:15 a.m. and ending at 11:15 a.m. in Courtroom 302 at 408 York Avenue in Winnipeg.
- ii. Federal adult matters - this docket is held every 2nd, 4th and 5th Thursday at 9:15 a.m. in Courtroom 302 at 408 York Avenue.

Out of Custody PTC Docket

- i. Provincial adult matters - this docket is held every Monday, Tuesday and Wednesday at 1:00 p.m. in Courtrooms 301 and 302 at 408 York Avenue in Winnipeg.

- ii. Federal matters - this docket is held every Thursday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg, and every Monday at 1:00 p.m. in Courtroom 303 at 408 York Avenue in Winnipeg.
- iii. Diversion Dockets - this docket is held every Friday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg.

All proceedings will be digitally monitored except the PTC Bail Triage Docket.

Bail Triage Docket

All adult bail applications and expedited custody dispositions will appear on the Bail Triage Docket before being transferred to Bail Court. This docket is held Monday to Friday starting at 9:30 in Courtroom 301 at 408 York Avenue in Winnipeg for triage of custody matters. Bail applications as well as expedited custody dispositions (matters where the accused has been on the Bail Triage Docket for 5 days or fewer and wishes to dispose of the matter rather than apply for bail) can be heard in the Bail Courts, time permitting. Prior to a matter being transferred into the Bail Court the PTC will confirm that both the Crown and Defence are ready to proceed.

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 first appearance, the PTC will transfer the matter to the Bail Court Judge for an appearance either by video or in person.

If counsel of record does not appear on a matter **prior to 11:15 a.m.**, the PTC will transfer the matter to appear before the Bail Court Judge.

The PTC will monitor the amount of time that a new arrest appears on the Bail Docket. After five working days, the PTC will remand the accused to the custody PTC docket for a crown to be assigned if the accused is represented by counsel. Any matter returning to the bail triage docket will be remanded back to the PTC custody docket after three working days on the Bail Triage Docket. If defence counsel requests the matter remain on the Bail Docket, the matter will be transferred into Court for counsel to seek authorization from the presiding Bail Court Judge.

Unrepresented Accused on the Bail Triage Docket

If the accused is unrepresented after the five day time limit, the matter will be remanded to the Custody Administrative Court where it will remain until a date is set for sentencing, preliminary inquiry or trial.

Custody PTC Dockets

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

The PTC will monitor all matters where the accused is represented by counsel for 6 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 16 weeks will apply.

Out of Custody PTC Dockets

All charges:

The first appearance in Court on all out of custody matters will be 6 to 8 weeks after release.

The name of the assigned Crown and disclosure is expected to be provided to defence at the first appearance on the PTC docket. Disclosure includes court assistance reports, criminal record if any, police narrative reports, officer's notes and written statements.

The PTC will monitor all matters for 8 weeks from the first appearance on the 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:

Before the first Court appearance, 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.

Where a Judge is seized:

A matter which is waiting for a Judge who is seized of the matter to set a date may appear on a PTC docket until the date is confirmed by the Trial Coordinator provided the accused remains out of custody.

Counselling/Diversion Programs

If the Crown confirms a matter will be referred to a counselling/diversion program, and defence accepts the diversion position, the PTC will adjourn the matter to the diversion PTC docket. The diversion timeline will be seven months from the first appearance on the diversion docket.

The following guidelines will apply from the date of referral;

- 1) an initial one month remand to confirm enrolment in the program;

- 2) a second one-month remand may be permitted if enrolment has not been confirmed and the Crown does not oppose the remand;
- 3) Remands up to three months as agreed by the Crown to monitor progress in the program.

If the PTC is satisfied that the matter is progressing and the Crown agrees, diversion matters may remain on the diversion docket beyond the timeline.

If the PTC or Crown is not satisfied that the matter is progressing or diversion has been unsuccessful, the matter will be remanded to the PTC docket with a new one month timeline set.

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 and one remand if the maximum of five remands has been reached. There is no limit on the length of the extension that may be granted. 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. For matters requiring 1 day or less where the accused is in custody the date must not be more than 8 months in the future. For matters requiring 1 day or less where the accused is out of custody the date must not be more than 12 months in the future. If the matter involves allegations of child abuse and requires Courtroom 412 or the matter is being prosecuted by the Public Prosecution Service of Canada the date must not be more than 18 months in the future.

Legal Aid / U of M Law Clinic Timeline Extension

The PTC will grant one timeline extension of up to 8 weeks from the date of assignment on matters where there has been a new assignment of counsel who are staff Legal Aid lawyers or students supervised by the U of M Legal Aid Clinic.

Limit on Remands before PTC

A maximum of five remands will be allowed on the PTC docket unless the timeline has not expired, the accused is actively seeking to retain counsel and the Crown consents to further

remands or the accused is co-accused with an accused who is actively seeking to retain counsel and the Crown consents to further remands.

Pre-Sentence Reports (PSR)

When a PSR is ordered the Judge will set a due date for the report and set the sentencing date for the accused with the input of counsel. If the Judge does not set the date and adjourns the matter to a PTC docket, a date must be set when the matter first appears before the PTC.

UNREPRESENTED ACCUSED – OUT OF CUSTODY

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 accused will be provided with disclosure as well as the name and phone number for the Crown Attorney assigned to his file or the appropriate Supervising Senior Crown Attorney. The accused will be granted a remand in order to contact the assigned Crown Attorney to obtain the Crown's position and begin discussions.

PRELIMINARY INQUIRY & TRIAL DATES

When a matter is being set for preliminary inquiry or trial and the accused is out of custody, a trial slip or hearing acknowledgement signed by the accused must be filed with the Court when the date is set unless counsel has previously filed a Designation of Counsel Form in which case a trial slip or hearing acknowledgement is not required. If a trial slip, hearing acknowledgement or designation of counsel is not filed with the Court the date will be reserved and the matter will be adjourned as follows:

- Matters prosecuted by the Public Prosecution Service of Canada will be adjourned two weeks to the next PTC docket and the PTC will order that the accused personally appear with counsel. If the accused does not appear and counsel does not have a signed Designation of Counsel Form, trial slip or hearing acknowledgement the PTC will issue a warrant for the accused and the reserved date will be cancelled;

- Matters prosecuted by Manitoba Prosecution Service will be adjourned to the next date setting docket which will sit on the 2nd and 4th Thursdays of the month at 1:00 p.m. in courtroom 302. Matters are not to be remanded to a date setting court that sits in the same week but to a subsequent date setting court. The PTC will order that the accused personally appear with counsel. If the accused does not appear and counsel does not have a signed Designation of Counsel Form, trial slip or hearing acknowledgement the PTC will issue a warrant for the accused and the date will be cancelled. Counsel and the accused, if required, must attend the date setting docket no later than 2:30 p.m.

If a date has not been previously arranged with the crown then the matter will be adjourned as noted above.

If the accused is in custody when the date is set the remand warrant will ensure the attendance of the accused and a signed designation of counsel, trial slip or hearing acknowledgement is not required.

If the accused is unrepresented when the date for preliminary inquiry or trial is set the PTC will advise the accused of the following:

- A Case Management Conference presided over by a Judge may be arranged by the accused contacting the Crown to review the Crown's case and the nature of the proceedings including what the Court will expect from the accused;
- Steps must be taken immediately to retain counsel if that is what is intended to ensure that counsel will be available on the date scheduled for preliminary inquiry or trial;
- The accused will not be entitled to an adjournment on the day of the preliminary inquiry or trial because he or she wishes to retain counsel and has not yet done so or because counsel of choice is not available; and
- On the date scheduled for the preliminary inquiry or trial the accused must appear and be prepared to proceed to hearing. This requires that the accused bring the disclosure that has been provided by the Crown and arrange for the attendance of any witnesses that s/he wishes to have testify who are not being called by the Crown.

CASE MANAGEMENT

A Case Management Conference may be arranged only after a preliminary inquiry or trial date has been set unless the Crown is unable to estimate the amount of time required for preliminary hearing or trial:

- 1) at the request of either Crown or Defence Counsel

- 2) upon the direction of the Court

The Case Management Conference must occur at least two months prior to the date of the trial or preliminary inquiry except with the permission of the Case Management Judge.

If the Crown is unable to estimate the amount of time required for preliminary hearing or trial then a Case Management Conference may be arranged before a date for hearing is set and the matter will be adjourned to the next PTC docket two weeks after the Case Management Conference.

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;
- 2) When the remand date requested does not comply with the timeline requirements or the maximum number of remands.

NON-APPEARANCE BY AN ACCUSED

If an accused does not appear at the PTC out of custody docket and has a personal appearance requirement or does not have counsel appear, the non-appearance will be noted and the matter may be remanded for up to two weeks on the PTC 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 defence counsel objects to the warrant being issued immediately or the PTC is not prepared to issue the warrant the matter will be transferred to appear before a Judge.

If the accused appears on the date following the non-appearance, 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** triage docket and there has been no prior request for a remand made to the PTC or the Crown, the PTC will adjourn the matter to the next appropriately designated Custody Administrative Docket.

If counsel does not appear on a matter that is on the PTC **out of 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 two weeks. If there is no appearance on the subsequent date, the PTC will refer the matter to the Associate Chief Judge and adjourn the matter a further two weeks unless the timeline or remand limit has expired.

If the timeline is expired or will expire by the next remand or the maximum number of remands has been reached or will be reached by the next remand the PTC will adjourn the matter as follows:

- Matters prosecuted by the Public Prosecution Service of Canada will be adjourned two weeks to the next PTC docket and the PTC will order that the accused personally appear with counsel. If counsel does not appear with a signed Designation of Counsel Form, trial slip or hearing acknowledgement for a pre-arranged date, is not setting the matter for disposition and the accused is not present the PTC will issue a warrant for the accused;
- Matters prosecuted by Manitoba Prosecution Service will be adjourned to the next date setting docket which will sit on the 2nd and 4th Thursdays of the month at 1:00 p.m. in courtroom 302. Matters are not to be remanded to a date setting court that sits in the same week but to a subsequent date setting court. The PTC will order that the accused personally appear with counsel. If counsel does not appear with a signed Designation of Counsel Form, trial slip or hearing acknowledgement, is not setting the matter for disposition and the accused is not present the PTC will issue a warrant for 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. The timeline on the existing charges will not be affected by the new timeline, except in cases where the Crown agrees to “marry up” or amend the old timeline to be the same as that of the new charges.

GUILTY PLEAS

In Custody

Counsel will advise the PTC when a matter is ready for sentencing and whether an in person appearance is required along with the reason. The accused *must* be brought before the sentencing Judge in person when the Crown is seeking a sentence of more than two years from the date of sentencing or if otherwise directed by the sentencing Judge.

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.

When an unrepresented person wishes to plead guilty on his first Court appearance and the Crown agrees to a same day disposition, the PTC will ensure that the accused is aware of all 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 transferred to a same day plea Court for sentencing.

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 in accordance with section 84(1) of the Legal Profession Act (see Appendix “D”). Any subsequent matters transferred to Court after the initial call will be done on a first come first served basis.

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

CUSTODY ADMINISTRATIVE COURT

When a matter has had 5 remands on the Custody Triage docket or reached the end of its timeline the PTC no longer has jurisdiction over the matter. The PTC will adjourn the matter to the next appropriately designated Custody Administrative Court¹ presided over by a Judge. The PTC may at any time refer a matter to the Custody 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 or grant a further remand to an Administrative Court.

LEGAL AID ADMINISTRATIVE COURT

The Legal Aid Administrative Court docket is for matters where adult out of custody accused are being prosecuted by Manitoba Justice; and where staff lawyers and private bar lawyers are appearing until any outstanding issues regarding the Legal Aid certificate have been addressed. Custody matters will not ordinarily appear in the Legal Aid Administrative Court unless requested by counsel, a PTC or a Judge. Individuals who are in custody will be transported to Court unless the appearance is waived.

Cases that will be adjourned to the Legal Aid Administrative Court:

- When an individual advises the PTC that he or she is applying for LA the matter will be adjourned two weeks for the application to be filed.
- If the application has not been filed after two weeks then the matter will be adjourned to the Legal Aid Admin Court.
- If 2 weeks after the application has been filed, the Legal Aid paralegal advises the PTC that the application is not complete the matter is to be adjourned to the Legal Aid Administrative Court.
- When Legal Aid refuses the application or cancels an existing certificate the matter will be adjourned to the Legal Aid Administrative Court to review the options (appeal, UM, set a date).
- If the accused makes an appointment at the University of Manitoba Law Clinic, the appointment is past the timeline and the Crown is not prepared to consent to a timeline extension the matter is to be adjourned to the next Legal Aid Administrative Court.

If Legal Aid appoints counsel then the Administrative Judge will set a timeline and adjourn the matter to appear before the PTC. Before setting the timeline, the Administrative Judge will consider the history of the matter and the stage of the proceedings.

¹ For matters appearing on the Federal PTC Dockets, the next appropriately designated Administrative Court may be a subsequent Administrative Court rather than the next Administrative Court provided the PTC is given the reason a remand to a subsequent Administrative Court is being sought and the remand is with the consent of both parties.

Appendix A - Crown Stay of Proceedings Form

TO BE COMPLETED BY CROWN	CROWN REQUEST - STAY OF PROCEEDINGS	
	DATE:	
	NAME OF ACCUSED:	
	DATE OF BIRTH:	
POLICE REPORT #:		
CHARGES:		
COURT POCKET #:		
STATUS OF CASE:		
CURRENT REMAND DATE:		
Courtroom:		
<input type="checkbox"/> 408 YORK AVENUE OR		
<input type="checkbox"/>		
I HEREBY DIRECT THAT A STAY OF PROCEEDINGS BE ENTERED FORTHWITH, ON THE RECORD OF PROCEEDINGS OF THE ABOVE NOTED CHARGES.		
CROWN:		
SIGNATURE: _____		
Defence Counsel:		
E-mail address: _____ or Telephone # _____		
CROWN CONTACT:	PHONE NUMBER:	

Appendix B – Pre-Plea Comprehension Inquiry Form

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)

Appendix C – Designated Offences

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

Appendix D – Order of Precedence

C.C.S.M. c. L107

The Legal Profession Act

Table of Contents

Bilingual (PDF)

Regulations

(Assented to August 9, 2002)

PART 7 GENERAL

Order of precedence

84(1) Lawyers who are members are entitled to precedence before the courts and before other tribunals in the following order:

- (a) the Attorney General of Canada;
- (b) the Solicitor General of Canada;
- (c) the Attorney General of Manitoba;
- (d) lawyers who have held the office of the Attorney General of Canada or of Manitoba, according to seniority of appointment to the office;
- (e) lawyers who have held the office of Solicitor General of Canada, according to seniority of appointment to the office;
- (f) lawyers appointed by the Governor General or by the Lieutenant Governor in Council of any province as Her Majesty's counsel learned in the law, according to seniority of appointment to the office, but only if appointed before the coming into force of this Act;
- (g) other lawyers, according to seniority of their registration in the rolls.