

# WAIVER TRIALS - POLICIES AND PROCEDURES

(EFFECTIVE MARCH 1, 2021)



The policies outlined below are meant to provide guidance to judges in the waiver, majors and homicide programs in conducting waiver trials during the current phase of the COVID-19 pandemic. As circumstances related to the pandemic change, these policies will be updated as deemed appropriate.

## 1. GENERALLY

- At present, the FJD is prioritizing cases involving CUSTODY defendants.
- COURTROOM ACTIVITIES: generally, in-court proceedings are permitted only for (1) custody waiver trials; and (2) dispositive plea and sentencing hearings involving custody defendants (where the parties elect not to proceed via video).
  - If a judge wishes to hold any other type of in-court hearing (e.g., a bail revocation hearing), permission must first be obtained from S.J. Tucker.
- NON-CUSTODY DEFENDANTS: trials and in-court hearings involving non-custody defendants should continue to be rescheduled into the spring and summer months. However, judges are encouraged to use Zoom to conduct hearings and address substantive matters in bail cases, whenever possible.
- ZOOM WAIVERS: For substantive proceedings held over Zoom, a record should be made establishing that the defendant has waived the right to be present in the courtroom and has agreed to proceed using the Zoom audio-visual technology.
- SAFETY POLICIES: judges and courtrooms should continue to abide by the general COVID-19 safety procedures and policies previously issued by the FJD.

## 2. PRETRIAL CONFERENCES

- All cases listed for trial should also be given a pretrial conference date, which should generally take place over Zoom 1 to 2 weeks before the trial date.
- HIGHER PRIORITY CASES: In selecting ready cases for trial slots, judges are encouraged to give priority to older cases, as well as cases charging violent crimes.
- THREE SLOTS: Judges may hold up to 3 trials per day (e.g., trials starting at 10am, 1pm & 3pm).
- PUBLIC ACCESS: Public access for trials will be limited to 2 people socially distanced in the gallery.
- READINESS: Counsel should be advised to confirm the availability of all witnesses for trial prior to the pretrial conference. Counsel should further be advised that continuances will be granted only in exceptional circumstances after the case has received a trial slot at the pretrial conference.
- BRINGDOWN CANCELLATIONS: Bringdowns of custody defendants should be cancelled immediately whenever it appears that a previously-scheduled trial will not be proceeding. To avoid unnecessary bringdowns, court staff should re-confirm with counsel that the parties will be ready for trial 2-3 days before the trial date.
- TRIAL INFORMATION: If a case is assigned to a trial slot, counsel for the parties should provide the following information at the pretrial conference:
  - A. Number of witnesses;
  - B. Names of all civilian witnesses and members of the public;
  - C. Estimated trial length; and

D. Whether any pretrial motions need be addressed.

- **CIVILIAN APPROVAL**: The Stout Center remains closed to the public. Accordingly, the names of all civilian witnesses and members of the public must be provided to Courtroom Operations at least 24 hours prior to trial in order to be permitted entry into the building. Before these names are provided to Courtroom Operations, judges must also obtain approval for the entry of civilian witnesses and members of the public from S.J. Tucker.
- **EXHIBITS**: Trial counsel should be instructed to bring at least 4 copy sets of marked exhibits, including copies for the judge, opposing counsel, and witnesses.
- **LARGE TRIALS**: If a trial will require more than 8 witnesses, the trial should be discussed with Courtroom Operations, which will check if any other courtrooms on the floor are scheduled for large trials at the same time.
- **CO-DEFENDANTS**: Judges may schedule trials involving up to 2 co-defendants who are in custody, but trials involving co-defendants must proceed on a Friday in a larger jury courtroom to facilitate social distancing. Staff for Waiver Program courtrooms may reserve a timeslot in a larger courtroom by contacting Courtroom Operations.

### 3. **WAIVER TRIALS**

- **MASKS**: Everyone should wear a mask at all times while in the courtroom and maintain a physical distance of at least 6 feet from one another. The use of a cloth mask over a disposable mask (double-masking) should be encouraged.
- **CONTACT TRACING**: For purposes of contact tracing, all attorneys must provide the names and telephone numbers of all witnesses and other individuals present in the courtroom to the courtroom crier prior to leaving the courtroom.
- **RESTRICTED PRESENCE IN COURTROOM**: Parties from different cases should not be in the courtroom at the same time. No members of the public or case participants should enter the courtroom more than 10 minutes before their trial's start time.
- **WITNESSES**: Witnesses should be encouraged to wait outside the building until they are called to testify, and enough time should be allocated in order to facilitate this process. While testifying, witnesses will be seated behind a clear, plexiglass barrier. Face shield masks may be obtained from Courtroom Operations to facilitate the taking of witness testimony.
- **ATTORNEY POSITIONING**: Judges should encourage counsel to minimize their movements in the courtroom and remain in one socially distanced location. To that end, counsel should distribute all exhibits prior to the start of trial.