

# King County Superior Court Criminal Department Manual

Revised March 2015

## Revisions to the Criminal Department Manual:

- Chief Judge approval: The Chief Criminal Judge and Chief MRJC shall determine if immediate revisions to the Criminal Department Manual are required.
- Executive Committee: The Chief Criminal Judge and Chief MRJC shall determine if revisions to the Criminal Department Manual must be brought to the Executive Committee for approval per LCR 0.7(c).

## Table of Contents

1	STATEMENT OF PURPOSE.....	4
	1.1 CRIMINAL DEPARTMENT NEWS AND INFORMATION DISTRIBUTION....	4
2	ORGANIZATION OF CRIMINAL DEPARTMENT .....	5
	2.1 CRIMINAL DEPARTMENT JUDGE RESPONSIBILITIES .....	5
	2.2 CHIEF CRIMINAL JUDGE/ASSISTANT CHIEF CRIMINAL JUDGE/CHIEF MRJC JUDGE RESPONSIBILITIES .....	5
	2.3 DRUG DIVERSION COURT .....	6
	2.4 DISTRICT COURT'S MENTAL HEALTH COURT .....	7
	2.5 RALJ APPEALS.....	8
	2.6 CRIMINAL DEPARTMENT STAFF.....	8
3	CRIMINAL DEPARTMENT SCHEDULE .....	9
	3.1 KCCH/SEATTLE .....	9
	3.2 MRJC/KENT .....	10
	3.3 DRUG DIVERSION COURT .....	10
4	CRIMINAL DEPARTMENT CONTACT INFO .....	11
	4.1 KCCH/SEATTLE .....	11
	4.2 MRJC/KENT .....	11
	4.3 DRUG DIVERSION COURT .....	11
5	ARRAIGNMENT .....	13
	5.1 PROCEDURE .....	13
	5.2 UNREPRESENTED DEFENDANTS .....	13
	5.3 BAIL .....	13
6	APPOINTMENT OF COUNSEL .....	14
	6.1 CONFLICT OF INTEREST.....	14
	6.2 MOTION TO WITHDRAW OR SUBSTITUTE COUNSEL .....	14
	6.3 CHALLENGE TO DETERMINATION OF FINANCIAL INELIGIBILITY.....	14
	6.4 PUBLIC DEFENDER CERTIFICATIONS .....	14
7	BOND HEARING CALENDAR.....	16
	7.1 CALENDAR .....	16
	7.2 SETTING A BOND HEARING.....	16
	7.3 BOND HEARING AFTER PLEA OR FINDING OF GUILTY .....	17
8	INTERPRETERS .....	18
	8.1 STATUTORY REQUIREMENT .....	18
	8.2 EXAMINATION OF QUALIFIED INTERPRETER.....	18
9	COMPETENCY EVALUATION .....	19
	9.1 CONTESTED DETERMINATION REGARDING COMPETENCY .....	19
	9.2 HEARING AFTER RESTORATION .....	19
	9.3 SEALING .....	20
10	SERVICES AT PUBLIC EXPENSE.....	21
	10.1 REVIEW OF DPD DECISION .....	21
	10.2 MOTIONS TO SEAL .....	21
	10.3 RETAINED COUNSEL.....	22
11	CASE SCHEDULING HEARING .....	23
	11.1 CONTINUANCE OF CASE SCHEDULING HEARING - SEATTLE.....	23
	11.2 CONTINUANCE OF CASE SCHEDULING HEARING - KENT.....	24
	11.3 SETTING THE TRIAL DATE.....	25
12	DISCOVERY CONFERENCE.....	26
13	OMNIBUS HEARING.....	27
	13.1 CALENDAR .....	27
	13.2 PROCEDURE .....	27
	13.3 THE JUDGE'S ROLE AT THE OMNIBUS HEARING.....	28
	13.4 THE OMNIBUS HEARING ORDER .....	28

14	EXPEDITED MOTIONS CALENDAR.....	29
	14.1 CALENDAR .....	29
	14.2 SETTING AN EXPEDITED MOTION .....	29
	14.3 NOTICE.....	30
15	CRIMINAL MOTIONS .....	31
	15.1 CALENDAR .....	31
	15.2 SETTING A CRIMINAL MOTION .....	31
	15.3 MOTIONS CALENDAR LIMITED .....	31
16	GUILTY PLEAS .....	33
	16.1 MOTIONS TO WITHDRAW GUILTY PLEA.....	33
17	TRIALS .....	35
	17.1 TRIAL CONTINUANCE .....	35
	17.2 CASE ASSIGNED TO TRIAL .....	35
	17.3 CASE ON STANDBY .....	36
	17.4 TRIAL CALL .....	37
	17.5 MISTRIAL.....	37
	17.6 NEW TRIAL FOLLOWING ORDER, WITHDRAWAL OF PLEA, OR REMAND .....	38
18	FAILURE TO APPEAR/MOTION TO QUASH .....	39
	18.1 ARREST WARRANT/ARRAIGNMENT .....	39
	18.2 BENCH WARRANT AT CASE SCHEDULING .....	39
	18.3 BENCH WARRANT AT OMNIBUS OR TRIAL .....	39
	18.4 BENCH WARRANT AT SENTENCING .....	39
19	PRE-ASSIGNED CASES .....	40
20	SENTENCING.....	41
	20.1 SENTENCING AUTHORIZATION FOR JUDGES PRO TEMPORE .....	42
	20.2 POST TRIAL/PLEA RELEASE .....	43
	20.3 SENTENCING CALENDARS .....	43
	20.4 SCHEDULING SENTENCING HEARINGS .....	43
	20.5 DEPARTMENT OF CORRECTIONS PRESENTENCE REPORT.....	44
	20.6 EXCEPTIONAL SENTENCES .....	44
	20.7 COURT COSTS .....	45
	20.8 CREDIT FOR TIME SERVED .....	45
	20.9 INFORMATIONAL FORMS.....	45
21	SENTENCING VIOLATION HEARINGS .....	46
22	MATERIAL WITNESS WARRANT/HEARING .....	47
	22.1 IN-STATE WITNESSES .....	47
	22.2 OUT-OF-STATE WITNESSES .....	47
23	PRO SE DEFENDANT .....	49
24	RALJ.....	50

## **1 STATEMENT OF PURPOSE**

The purpose of this manual is to advise King County Superior Court judges and attorneys, pursuant to Local Rules of the Superior Court for King County, [LCrR 1.1](#), of current procedures for handling and processing criminal cases in King County Superior Court.

### **1.1 CRIMINAL DEPARTMENT NEWS AND INFORMATION DISTRIBUTION**

The Criminal Department regularly distributes important procedural information, new forms, caseload data, and monthly trial calendar information to criminal case practitioners.

To subscribe to Superior Court's Criminal Department News and Information distribution list, click on the following link and follow the instructions on the subscription page: [Criminal Department News and Information](#)

## **2 ORGANIZATION OF CRIMINAL DEPARTMENT**

The Presiding Judge of the King County Superior Court will appoint judges to the Criminal Department in Seattle to serve for a designated term in accordance with the court's rotation policy. Trial judges assigned to the MRJC, and not assigned to Unified Family Court, are considered Criminal Department Judges for purposes of this manual.

### **2.1 CRIMINAL DEPARTMENT JUDGE RESPONSIBILITIES**

The judges in the Criminal Department shall be responsible for the case management and trial of all adult criminal cases within the King County Superior Court.

Sentencing hearings from the Plea Calendar shall be assigned to sentencing calendars spread among the judges assigned to the Criminal and Civil Departments. The following departments will not be assigned sentencing calendars:

- Presiding Judge
- Assistant Presiding Judge
- Chief MRJC Judge
- Chief Civil Judge
- Chief Criminal Judge
- Assistant Chief Criminal Judge
- Unified Family Court (UFC) Judges
- Juvenile Department Judges
- Drug Diversion Court Judge(s)

Each judge shall be responsible for handling his or her own sentencing hearings following trials or guilty pleas that were assigned as trials, except that pleas accepted by a judge on the plea calendar shall be assigned to a supervising judge.

When sentencing hearings are continued, they shall be heard at a later date by the judge to whom the sentencing was originally assigned.

### **2.2 CHIEF CRIMINAL JUDGE/ASSISTANT CHIEF CRIMINAL JUDGE/CHIEF MRJC JUDGE RESPONSIBILITIES**

Cases with a SEA Designation: The Chief Criminal Judge will conduct the expedited motion calendar, the case scheduling calendar, the competency calendar, the omnibus calendar, and the in and out of custody SRA modification calendar.

The Assistant Chief Criminal Judge will conduct the arraignment calendar, the bond calendar, the criminal motions calendar, and other assignments at the direction of the Chief Criminal Judge.

The Chief Criminal Judge will assign a Seattle criminal judge to the plea calendar. The judge assigned to the plea calendar will hear the anti-harassment calendar on Tuesday.

Cases with a KNT Designation: The Chief MRJC Judge will conduct arraignments, the expedited motion calendar, the bond calendar, the case scheduling calendar, and the omnibus calendar.

The Chief MRJC Judge will assign a Kent judge to the plea calendar, the criminal motions calendar and the in-custody SRA calendar. The judge assigned to the plea calendar will hear the anti-harassment calendar on Mondays and Wednesdays.

The Chief Criminal Judge and the Chief MRJC Judge, or their designees, will make probable cause determinations in the filing of new cases and will resolve any other matters as needed in the absence of a trial or sentencing judge.

### 2.3 DRUG DIVERSION COURT

A Drug Diversion Court Judge will hear the Drug Diversion Court Calendars in both Seattle and Kent.

The King County Drug Diversion Court (KCDDC) provides eligible defendants charged with felony drug and property crimes the opportunity for drug treatment and access to other ancillary services. Eligible defendants can elect to participate in the program or proceed with traditional court processing. After choosing to participate in the program, defendants come under the court's supervision and are required to attend treatment sessions, undergo random urinalysis, and appear before the KCDDC judge on a regular basis. KCDDC is a pre adjudication program. If defendants meet the requirements of each of the four phases of KCDDC, they graduate from the program and their charges are dismissed. If defendants fail to make progress, having stipulated to the facts of the police report at opt-in, they are terminated from the program and sentenced on their original charge following a bench trial.

King County Drug Diversion Court's (KCDDC) current eligibility criteria are available on the KCDDC website:

<http://www.kingcounty.gov/courts/DrugCourt.aspx> The King County Prosecuting Attorney's Office screens all police referrals for KCDDC eligibility. When the Prosecutor determines a defendant to be KCDDC eligible, the case is filed directly into KCDDC for arraignment. Defendants whose cases have been filed mainstream may ask to have the case reviewed again by the Prosecutor. Defense attorneys are to provide a completed transfer request and any supporting documents to the Drug Court Prosecutor for his/her review. A copy of the transfer request should also be provided to the Drug Court Prosecutor's paralegal. The transfer request form is also available on the DDC website.

#### Rules Regarding Eligibility:

1. The eligibility criteria are published; not open to discretion by the defense bar, the prosecutor's office, or the court (except as noted in Rule #4); and will be adhered to strictly. Criteria were agreed upon by the Superior Court, the defense bar, the prosecuting attorney, chemical dependency experts, and law enforcement.
2. The court will not make exceptions to eligibility criteria. In cases where the prosecutor has deemed a defendant to be ineligible, a defendant may petition the court for acceptance to the program. In making a determination on the defendant's request, the court will consider only whether drug court eligibility criteria were appropriately applied.
3. There must be a reasonable basis to believe the defendant can successfully complete the KCDDC program after taking into consideration factors such as: the defendant's mental and/or physical health, past performance in KCDDC, and living situation. The court will make the ultimate determination regarding eligibility when a "reasonable basis" for successful completion is in question.
4. Juvenile history may be considered at the discretion of the court.

#### 2.4 DISTRICT COURT'S MENTAL HEALTH COURT

King County District Court operates a Mental Health Court (MHC) for misdemeanor defendants suffering from mental illness. Defendants are referred to the MHC from a variety of sources. In some instances, a defendant's case may begin as a felony charge in Superior Court but subsequently may be negotiated to a misdemeanor plea with

supervision and treatment in the MHC. When this happens – and if District Court finds that the defendant meets the eligibility requirements for the MHC – the case may be refiled as a misdemeanor in District Court. For more information about the MHC, please visit District Court’s MHC webpage at:

<http://www.kingcounty.gov/courts/DistrictCourt/MentalHealthCourt.aspx>.

## 2.5 RALJ APPEALS

RALJ appeals are assigned at the time of filing to individual judges in the Criminal, Civil, and UFC Departments in Seattle and Kent. Criminal RALJ judge re-assignments after initial filing shall be made by the Seattle Chief Criminal Judge for Seattle appeals or the MRJC Chief Judge for Kent appeals.

## 2.6 CRIMINAL DEPARTMENT STAFF

### Seattle

Criminal Case Manager (primary location)  
Court Operations Supervisor I  
Criminal Calendar Coordinator II  
Criminal Court Information Processing Specialist  
Customer Service Specialist II

### Kent

Court Operations Supervisor I  
Criminal Calendar Coordinator II  
Court Operations Specialist II

### 3 CRIMINAL DEPARTMENT SCHEDULE

#### 3.1 KCCH/SEATTLE

<b>Calendar</b>	<b>Day of the Week</b>	<b>Time</b>	<b>Location</b>
Expedited Motions	Mon – Thursday	8:30	E-1201
Motions to Continue	Mon – Thursday	1:00	E-1201
Extradition Waivers	Mon – Thursday	8:30	E-1201
Arraignment	Mon – Thursday (TUE – DV ONLY)	9 – 12	E-1201
Bond (including TR requests, modify conditions or lift/modify NCO)	Mon – Thursday (DV: Tues & Thurs)	11:00	E-1201
Plea	Monday	9 – 12	Rotates
		1 – 4	Rotates
	Tuesday	1 – 4	Rotates
		Wednesday	9 – 12
	1 – 4		Rotates
	Thursday	9 – 12	Rotates
1 – 4		Rotates	
Friday	9 – 12	Rotates	
Competency (including returns); Cont Comp before Criminal Motions Judge	Mon – Thursday	1:00	E-1201
Contested Competency Status Conference	Mon – Thursday	9:00	E-1201
Case Scheduling	Mon – Thursday (No mainstream on Tues.- only DV/SAU)	1:00	E-1201
Trial Call	Mon – Thursday	After Case Setting	E-1201
	Friday	After SRA	E-1201
Criminal Motions	Mon-Thursday	1:30	Assistant Chief Criminal Courtroom
Bond Forfeiture	2 <sup>nd</sup> Thursday of each month	3:15	E-1201
Omnibus (special set OH Mon – Wed @ 1:00)	Friday	8:30	E-1201
Sentencing	Friday	1 – 4:30	Rotates
SRA Mod – In and out of custody	Friday	1:00	E-1201

## 3.2 MRJC/KENT

<b>Calendar</b>	<b>Day of the Week</b>	<b>Time</b>	<b>Location</b>
Expedited Motions	Mon – Thursday	8:30	GA
Extradition Waivers	Mon – Thursday	8:30	GA
Arraignment	Mon, Tues , Thurs Only DV on Tuesdays. Note: during holiday weeks, there will be an arraignment calendar on Wednesday.	9 – 11	GA
Anti-Harassment	Monday	9:00 – 12	Rotates
	Wednesday	9:00 – 12	Rotates
Plea Calendar	Monday	1:30 – 4	GA
	Tuesday	9:00 – 12	Rotates
		1:30 – 4	GA
	Wednesday	1:30 – 4	GA
	Thursday	9:00 – 12	Rotates
		1:30 – 4	GA
Bond	Mon – Thursday Limit to 8 bond hearings on each calendar. DV on Tues and Thurs. SAU on Wed.	11:00	GA
Case Scheduling	Mon – Thursday (No mainstream on Thurs.- only DV/SAU)	1:15	GA
Trial Call	Mon - Wednesday	1:10	GA
	Friday	1:30	GA
Omnibus	Friday	8:30	Rotates
Criminal Motions / Pleas off Omnibus	Friday	9 – 12	Rotates
Sentencing	Friday	1 – 4:30	Rotates
SRA Mod – In-Custody	Friday	1:30	GA

## 3.3 DRUG DIVERSION COURT

<b>Calendar</b>	<b>Day of the Week</b>	<b>Time</b>	<b>Location</b>
Drug Court Calendar	Monday, Tuesday, Thursday	9:00-12:00	Seattle
		1:30-4:00	E-912
	Friday	10:00- 12:00	Kent – 3F
		1:30-4:00	Kent – 3F

## 4 CRIMINAL DEPARTMENT CONTACT INFO

### 4.1 KCCH/SEATTLE

Trial Information	477-1481
Criminal Department Staff	477-1481
Scheduling Pleas and Sentencings	477-1482
Pleas and sentencings also may be set by emailing: <a href="mailto:pleacourtseattle@kingcounty.gov">pleacourtseattle@kingcounty.gov</a>	
Scheduling 8:30 Expedited Motions and Bond Hearings	477-1597
These hearings also may be set by emailing: <a href="mailto:seacriminalmotions@kingcounty.gov">seacriminalmotions@kingcounty.gov</a>	
Interpreters	477-1415
Scheduling Criminal Motions	477-1441
These hearings also may be set by emailing: <a href="mailto:seacriminalmotions@kingcounty.gov">seacriminalmotions@kingcounty.gov</a>	
Transcripts and Recordings of Proceeding for Criminal Department Calendars	477-1451

### 4.2 MRJC/KENT

Trial Information	477-2730
Criminal Department Staff	477-2730
Scheduling Pleas and Sentencings	477-2741
Scheduling Criminal Motions & Bond Hearings	477-2733
These hearings also may be set by emailing: <a href="mailto:barbara.winter@kingcounty.gov">barbara.winter@kingcounty.gov</a>	
Access to Clerk in Courtroom GA	205-2513
Interpreters	477-1372

### 4.3 DRUG DIVERSION COURT

King County Drug Diversion Court Services	477-0788
---	----------

Forms and instructions for ordering CD's of hearings in E-1201 or criminal motions calendars are located at <http://www.kingcounty.gov/courts/Clerk/Records/Copies%20of%20Hearings%20NEW/Ordering%20CDs.aspx>.

## **5 ARRAIGNMENT**

The arraignment calendars are scheduled by the Prosecuting Attorney's office. Arraignments are scheduled within 14 days of filing. Defendants who do not appear for their scheduled arraignment must contact the Prosecuting Attorney's office to get a new court date. Failure to appear at arraignment may result in the court's issuance of a bench warrant.

### **5.1 PROCEDURE**

At Arraignment, the Deputy Prosecuting Attorney shall advise the defendant of the charge and provide a copy of the information to defense counsel. The defendant shall enter a plea, make any objection to the date of arraignment, and may request a personal recognizance release or a reduction of bail or reserve such argument to the Bond Calendar. The Court may consider orders prohibiting contact with alleged victims and witnesses. The Court may also consider requests for Stay out of Drug Area (SODA) orders.

At arraignment the court shall set a case scheduling hearing date within 15 days of arraignment. A later date may be requested if accompanied by a waiver of speedy trial.

"Guilty" pleas are generally not taken at time of Arraignment. Due to the large number of arraignments each day, time does not allow for taking a guilty plea at arraignment and defendants often do not have assigned counsel at this time.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

### **5.2 UNREPRESENTED DEFENDANTS**

The Court shall advise unrepresented defendants of the procedure for obtaining counsel and shall set a hearing one week out to confirm counsel.

### **5.3 BAIL**

If a request to address bail or other condition of release is made at arraignment, a subsequent motion should set forth a change of circumstances. Upon receipt of such a motion, the court will determine whether a subsequent bond hearing will be set.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## 6 APPOINTMENT OF COUNSEL

Prior to assignment of counsel, the Department of Public Defense (DPD) is to screen the case to identify conflicts of interest in the prior or current representation of parties or witnesses.

As soon as discovery is provided, the assigned attorney (or his or her designee) shall again screen for conflicts. All conflicts shall be resolved before the first case scheduling hearing.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

### 6.1 CONFLICT OF INTEREST

When the court determines that there is a conflict of interest disqualifying assigned defense counsel from representing the defendant, the Department of Public Defense shall assign new counsel.

### 6.2 MOTION TO WITHDRAW OR SUBSTITUTE COUNSEL

Once the trial date has been set, any motion for change of attorney shall be heard by the Chief Criminal Judge or Chief MRJC Judge, with notice to opposing counsel.

### 6.3 CHALLENGE TO DETERMINATION OF FINANCIAL INELIGIBILITY

When a defendant disputes DPD's determination that he or she is not eligible for appointment of counsel at public expense, the defendant may request court review of the decision. If the court makes a finding of indigency, the court may order DPD to appoint counsel for the defendant with, or without, the requirement that the defendant execute a promissory note payable to DPD for the cost of representation.

### 6.4 PUBLIC DEFENDER CERTIFICATIONS

The Washington Supreme Court adopted Standards for Indigent Defense Services which mandate the filing of a certification of compliance with the courts by public defenders practicing in adult criminal and juvenile offender case types. These new standards became effective October 1, 2012.

In King County Superior Court, the Clerk's Office will be the repository for these certifications. For 2015, the case number in which to file these certificates is: **15-1-12051-1**. Each year, the Clerk will announce the new case number for the year.

Attorneys are required to e-file the certificates. The Supreme Court certification form is available as an e-form in the clerk's e-Filing application with the appropriate case number already inserted. Per the standard, attorneys are to submit one certificate per quarter. You may access the clerk's e-Filing application from the Clerk's E-Filing News and Information web page (<http://www.kingcounty.gov/courts/Clerk/E-Filing.aspx>). Log in then select the "Use e-Form Template" link, enter the case number, select the "Certification of Defense Counsel" New Form/Order Template, complete the template by entering your information via the Data Entry tab, save the document and complete the e-filing process. Please note: King County District Court, Seattle Municipal Court and all other courts will have a different process for accepting certifications.

## 7 BOND HEARING CALENDAR

### 7.1 CALENDAR

Motions to address bail or other conditions of release, prior to trial or plea, are heard by the Assistant Chief Criminal Judge in Seattle or the Chief MRJC Judge in Kent. Bond Motions are scheduled as follows:

Calendar	Day of the Week	Time	Location
Seattle	Mon – Thurs	11:00	E-1201
Kent	Mon – Thurs	11:00	GA

### 7.2 SETTING A BOND HEARING

Counsel may schedule the motion by obtaining an available hearing date from the Chief Criminal Judge's Bailiff in Seattle, or the Criminal Department Supervisor in Kent.

Parties may note bond motions either in person or by using the following contact information:

- Seattle: 477-1597, [seacriminalmotions@kingcounty.gov](mailto:seacriminalmotions@kingcounty.gov).
- Kent: 477-2733, [barbara.winter@kingcounty.gov](mailto:barbara.winter@kingcounty.gov).

The moving party shall notify opposing counsel of the date and time for the bond hearing, [CrR 8.1](#), [CR 6](#); [CrR 8.2](#), [CR 7](#).

For proper identification of an inmate, the following information is needed to note a bond hearing:

- The name of the defendant
- The defense attorney's name
- The CCN (Computer Control Number)
- The charges
- Date of arraignment
- Trial date
- Current bail amount
- Cause number

The bailiff shall forward a copy of the bond calendar by email or fax to the Prosecuting Attorney's Office and to the Department of Adult and Juvenile Detention Court Services Office. At a bond hearing, counsel must provide the court with the certification for determination of probable cause, Prosecutor bail request, criminal history, and the Court Services pretrial release interview form.

### 7.3 BOND HEARING AFTER PLEA OR FINDING OF GUILTY

Once a defendant has been found guilty, all other matters, including bail or release, shall be heard by the sentencing judge, provided that a judge not serving as judge pro tempore who takes a plea of guilty may make a bail or release decision at plea.

With the consent of the sentencing judge, or under special circumstances, such as when the sentencing judge is unavailable, a motion regarding conditions of release may be heard by the Chief Criminal Judge, Assistant Chief Criminal Judge or Chief MRJC Judge.

Motions subsequent to a sentence imposed by a pro tem judge (including release) shall be heard by the supervising judge assigned at the time of sentencing.

Release decisions in King County Drug Diversion Court are made with regard to community safety considerations, failure to appear history, and availability of appropriate treatment and housing placement.

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## **8 INTERPRETERS**

### **8.1 STATUTORY REQUIREMENT**

When available, the court shall use a certified court interpreter.

### **8.2 EXAMINATION OF QUALIFIED INTERPRETER**

When a certified interpreter is unavailable, the court may qualify an interpreter. The court may conduct a colloquy to determine whether the interpreter is qualified and is familiar with the Code of Conduct for Court Interpreters ([GR 11.2](#)), or the court may require that an interpreter submit an Interpreter Declaration of Qualifications for this purpose.

Certified and registered interpreters file an oath of interpreter with AOC. Other interpreters must be sworn by the court at the beginning of each proceeding. The Interpreter Oath shall be administered as follows:

Spoken Language: Do you swear (affirm) that you will make a true interpretation to the person being examined of all the proceedings in the \_\_\_\_\_ language, and that you will repeat the statements of the person being examined to this court in the English language, to the best of your skill and judgment?

Deaf / Hearing Impaired: Do you swear (affirm) that you will make a true interpretation to the person being examined of all the proceedings in a manner which the person understands, and that you will repeat the statements of the person being examined to this court, to the best of your skill and judgment?

For more information about the court's Office of Interpreter Services, please visit their webpage at:

<http://www.kingcounty.gov/courts/SuperiorCourt/InterpSrv.aspx>.

## 9 COMPETENCY EVALUATION

Upon motion of either party, or upon the court's own motion, the court shall decide if there is reason to doubt the defendant's competency to stand trial.

If the court finds reason to doubt the competency of a defendant, the court shall order a competency evaluation. Alternatively, if the court determines at the outset that the defendant is incompetent, the court may directly commit the defendant for competency restoration.

### 9.1 CONTESTED DETERMINATION REGARDING COMPETENCY

Upon completion of an evaluation, the court will determine whether defendant is competent. Should either party contest the determination, a hearing shall be scheduled before a trial judge in Kent or on the criminal motions calendar in Seattle.

At Seattle location, all contested competency hearings shall be set at 9:00 in E-1201 to hold status hearings. Contested competency hearings of less than three hours will be scheduled before the Criminal Motions Judge; contested competency hearings expected to last more than three hours will be placed on the trial calendar for assignment to an available trial judge.

### 9.2 HEARING AFTER RESTORATION

A defendant who is found to be incompetent is committed for a period of up to 90 days for restoration or 45 days for all cases in which the highest charge is a Class C felony or a Class B felony that is not classified as a violent offense under [RCW 9.94A.030](#). If not restored, he may be committed for an additional 90 days. If still not restored, the charges shall be dismissed without prejudice, unless the court or jury determine that the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security and there is a substantial probability that the defendant will regain competency within a reasonable time. If these findings are made, the court may extend the period of commitment for an additional six months. At the end of the six month period, if the defendant has not been restored to competency, the case shall be dismissed without prejudice. The court may refer to a court-designated mental health professional for evaluation for civil commitment.

A defendant who has been restored should be seen on the relevant calendar within at most two court days after his return from Western

State Hospital. Counsel should not wait for the pre-scheduled hearing date.

### 9.3 SEALING

Upon motion, the court will determine whether none, some or all of the competency evaluation report shall be placed under seal in the court file in accordance with relevant law.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## 10 SERVICES AT PUBLIC EXPENSE

In addition to assignment of counsel at public expense, other services may be provided at public expense to indigent defendants who are determined to be eligible.

Provisions for other services at public expense, such as expert witnesses and investigation services, must be requested through the King County Department of Public Defense (DPD). Such applications may be heard *ex parte*.

### 10.1 REVIEW OF DPD DECISION

Should the request for services be denied in whole or in part for any reason, defendant may move for review de novo before the Chief Criminal Judge or Chief MRJC Judge, in accordance with [LCrR 3.1](#). Such a motion shall be in writing, and shall include a declaration of indigency; appointment of counsel does not establish indigency per se. The motion shall also include all documents that were presented to DPD and a copy of DPD's denial and documents regarding indigency. When a case has been pre-assigned to a judge, an appeal from DPD's denial of services shall be directed to the Chief Criminal Judge or Chief MRJC Judge.

Trial judges can authorize expert services during a trial up to a maximum of \$250 per individual expert. Authorization for these services will be granted only if the urgency of the request is demonstrated. The judge's order authorizing expert services at public expense must be submitted to DPD

### 10.2 MOTIONS TO SEAL

It shall be the responsibility of defense counsel to present a motion and proposed order for sealing, if defense counsel is seeking to have the order and supporting pleadings sealed. The order sealing, itself, may not be sealed.

1. If no motion to seal is sought, defense shall present to DPD a motion and proposed order for expert or other services other than counsel, [CrR 3.1\(f\)](#), [LCrR 3.1\(f\)](#), [JuCR 9.3](#). If the proposed order is accompanied by a motion to seal, defense shall send the documents first to the Chief Criminal Judge or Chief Juvenile Judge. Proposed orders with motions to seal must be submitted by e-mail to the Chief Criminal Judge ([seacriminalmotions@kingcounty.gov](mailto:seacriminalmotions@kingcounty.gov)) or Chief Juvenile Judge ([leah.daniels@kingcounty.gov](mailto:leah.daniels@kingcounty.gov)) unless the attorney receives specific permission from the judge to submit as a hard copy; the

proposed order to seal should be the first document in the e-mailed packet. When submitting a proposed order sealing documents, counsel must assure that the name of the document contained in the proposed order to seal and a proposed protective order, if any, must exactly match the name of the document in the caption and the date submitted; the clerk will not seal a document without an exact matching title; the document will be filed unsealed. The motion for expert services date is the date counsel signs and dates the motion. The date of the proposed order to seal will have two dates: submitted date and date OPD signs it. The submitted date for the order must be on the order to seal. Failure to do so may result in the clerk not sealing the documents in spite of an order to seal.

2. If the Chief Criminal Judge or Chief Juvenile Judge grants the proposed order to seal, the judge will print and sign the order, file the order to seal and send, via encrypted e-mail, a copy of the order to seal and the motion and proposed order for expert services to DPD ([OPDexpertservices@kingcounty.gov](mailto:OPDexpertservices@kingcounty.gov)); defense counsel will be copied by encrypted e-mail. DPD will, upon ruling on the motion for services, send all of the documents, including the copy of the order to seal, to DJA for procedural review and filing. If DJA detects an error, DJA may return the document to the Chief Judge or may file the documents unsealed.

3. If the Chief Criminal Judge or Chief Juvenile Judge denies the proposed order to seal, the court will file the order denying sealing and return the motion and a copy of the order denying sealing to defense counsel. Defense may then submit the pleadings to DPD without a proposed order to seal or submit an amended motion and proposed order with a motion to seal to the Chief Judge.

### 10.3 RETAINED COUNSEL

When retained counsel seeks appointment of expert services at public expense, the request to DPD shall be accompanied by the retainer agreement between counsel and defendant or between counsel and any party to the agreement, and a sworn declaration setting forth defendant's assets, income and liabilities.

Forms Available Online at

<http://www.kingcounty.gov/courts/OPD/Partners/Policies.aspx>:

- [Request for Services at Public Expense](#)

## **11 CASE SCHEDULING HEARING**

At arraignment the court shall enter an order setting a case scheduling hearing and requiring defendant's presence. Defendant shall acknowledge, in writing, that he/she has received a copy of the Order Setting the Case Scheduling Hearing.

### **11.1 CONTINUANCE OF CASE SCHEDULING HEARING – SEATTLE**

All cases will, at arraignment, get a case scheduling hearing two weeks from arraignment. No waivers will be accepted at arraignment absent unusual circumstances, e.g., defendant lives out of state.

At the first case scheduling, defendants with class A felonies, sex offenses and POAA allegations, defendant may waive for 60 days and obtain a second case scheduling in two months. Significant progress must be shown at the second case scheduling hearing (expert witnesses must have been obtained, records for mitigation must be sought quickly, negotiations must be commenced well before the day before the hearing). These clients should be brought to court for the second case scheduling hearing.

In all other cases, defense counsel may obtain a time for trial waiver from the defendant and may present the court with an order continuing case scheduling hearing which sets forth in writing the reasons why counsel is seeking a continuance of case scheduling. The continuance shall be for no more than four weeks. If the state agrees to the continuance, the parties may pass the endorsed order to the court. If the court concurs, the order will be signed by the court and will read the order aloud; if the court anticipates denying the continuance, or if the court needs more information, the case-scheduling hearing may be continued for up to a week so that defendant can be brought to court. If the state disagrees with the request for the continuance and wishes argument, then the case-scheduling hearing will be continued up to a week for defendant to be brought to court.

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

### 11.2 CONTINUANCE OF CASE SCHEDULING HEARING - KENT

1. The defendant shall appear at all case scheduling hearings. The only exception to this rule is when the parties agree to the defendant's non-appearance in advance of the designated hearing, and that agreement is reflected in writing and/or in the DPA's blue notes. The defendant cannot waive his or her presence at the initial case scheduling hearing. In-custody defendants will be brought to court for the initial case scheduling hearing. If an in-custody defendant needs to set a hearing on the record on another date, the defendant will be transported from the jail the next court day.
2. If a defendant fails to appear for a case scheduling hearing, the State will request a warrant. The State may agree to hold a case without a warrant for 1 week if the defendant has not had any prior FTAs and the defense counsel has had recent contact with the defendant. If the defendant fails to appear for the initial case scheduling hearing, the State will request a warrant.
3. If an out-of-custody defendant sets a plea within 2 weeks of the case scheduling hearing, the defendant does not need to submit a speedy trial waiver, but will need to submit a signed notice to appear. If an in-custody defendant sets a plea within 1 week of the case scheduling hearing, the defendant does not need to submit a speedy trial waiver, but will need to submit a signed notice to appear (in case of release prior to the plea).
4. For all speedy trial waivers, the next hearing date is the "commencement date" for speedy trial purposes.
5. If a defendant appears for a hearing, but defense counsel does not, the case *may* be set over without a waiver for a day or two to allow for counsel to appear. This would be an exception to the minimum "7-day" hold-over standard.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

### 11.3 SETTING THE TRIAL DATE

At the last case scheduling hearing, the parties shall, on the record and with defendant present, select a trial date and an omnibus hearing date not later than three weeks before trial.

A Trial Scheduling Order will be entered and signed by the parties and the Chief Criminal Judge or Chief MRJC Judge. Defendant shall sign and receive a copy of the Trial Scheduling Order.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx):

## **12 DISCOVERY CONFERENCE**

At the time trial is set or any time thereafter, the court may order a discovery conference on its own motion or on request of counsel. The conference shall be heard by the pre-assigned judge, the Assistant Chief Criminal Judge, the Chief MRJC Judge, or a designated judge. The defendant may attend but is not required to do so.

The purpose of the conference is to assure that discovery is proceeding in a timely and efficient manner and to develop a schedule of discovery events. Before the conference, counsel shall meet and confer and be prepared to discuss all discovery necessary for the proper resolution of the case. At the conclusion of the discovery conference, the court shall issue an Order on Discovery Conference.

The court may order multiple discovery conferences as needed.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx):

- [Order on Discovery Conference](#)

## 13 OMNIBUS HEARING

If the matter is set for trial, the court shall set an Omnibus Hearing. The defendant shall be present for the omnibus hearing unless previously excused by the court for good cause. An excused defendant must also sign a written waiver of his right to be present at omnibus. When the State has given written notice of intent to amend the information at the Omnibus Hearing, the defendant's presence is required.

### 13.1 CALENDAR

Omnibus Hearings are set according to the following schedule:

Calendar	Day of the Week	Time	Location
Seattle	Friday	8:30	E-1201
Kent	Friday	8:30	GA

If Friday is a non-judicial day, omnibus calendars may be held on the last court day of the week.

### 13.2 PROCEDURE

Prior to the Omnibus Hearing date, counsel shall meet, prepare a proposed Omnibus Hearing order, identify unresolved motions to be heard at trial, and exchange any additional discovery.

The parties shall propose an Omnibus Hearing Order at the Omnibus Hearing. Counsel will certify, on the record, that the trial date will be met and that no foreseeable issues will result in future requests for a continuance of the trial date.

The following procedures are to be followed:

- An agreed Order on Omnibus Hearing may be entered at the Omnibus Hearing if the parties agree that the parties have met, all discovery including witness interviews, is complete, the information will not be amended, all necessary witnesses are available for trial, and that the parties will be prepared for trial on the assigned date.
- Motions to continue omnibus and motions to continue trial shall be heard by the court.
- In accordance with [CrR 4.7](#), all discovery is expected to have been completed by the omnibus hearing.

It is the expectation of the court that the date originally set for trial will be the trial date, absent unforeseeable circumstances.

### 13.3 THE JUDGE'S ROLE AT THE OMNIBUS HEARING

At the Omnibus Hearing, the parties will inform the court of any issues affecting the readiness of the case for trial.

If investigation is incomplete, the court may continue the Omnibus Hearing and sign an order to keep attorneys on schedule so that the case is prepared to begin on the assigned trial date.

### 13.4 THE OMNIBUS HEARING ORDER

At the conclusion of the Omnibus Hearing, an Order on Omnibus Hearing shall be entered memorializing the agreements of counsel and the rulings of the court.

The Omnibus Hearing Order shall be in substantially the same form as specified in [CrR 4.5\(h\)](#). The order shall be signed by the court.

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## 14 EXPEDITED MOTIONS CALENDAR

### 14.1 CALENDAR

The Expedited Motions Calendar is heard by the Chief Criminal Judge in Seattle and the Chief MRJC Judge in Kent and is scheduled as follows:

Location	Calendar	Day of the Week	Time	Room
Seattle	Expedited Motions	Mon – Thursday	8:30	E-1201
Seattle	Motions to Continue	Mon – Thursday	1:00	E-1201
Kent	Expedited Motions	Mon – Thursday	8:30	GA

The Expedited Motions Calendar is limited to motions for withdrawal and substitution of counsel, motions to amend, change case designation, proceed pro se, motions to discharge, motions for continuance of the trial date, motion to request pre-assignment, and some limited discovery issues.

Other motions:

Order Vacating Conviction. These motions shall be noted before the judges to whom post sentencing motions have been assigned. The motion is to be noted pursuant [LCR 7](#). [LCR 40\(b\)\(6\)](#).

Restoration of Right to Possess Firearm. A petition to restore the right to possess a firearm shall be noted before the King County Superior Court judge to whom post-sentencing motions have been assigned if the conviction resulting in loss of the right occurred in King County Superior Court. If the conviction resulting in loss of the right occurred in a court of limited jurisdiction or the Superior Court of another county, the petitioner must file an original cause of action in King County Superior Court and the motion shall be noted without oral argument before the Chief Criminal Judge or the Chief Maleng Regional Justice Center Judge pursuant to [LCR 7](#). [For cases in which loss of firearms resulted in a juvenile matter refer to the Juvenile rules.] [LCR 40\(b\)\(16\)](#).

### 14.2 SETTING AN EXPEDITED MOTION

Seattle expedited motions are set directly with the Criminal Department bailiff. Parties may note expedited criminal motions in person although the preference is to send an e-mail to the following address.

- Seattle: 477-1591, [seacriminalmotions@kingcounty.gov](mailto:seacriminalmotions@kingcounty.gov).
- Kent: 477-2733, [barbara.winter@kingcounty.gov](mailto:barbara.winter@kingcounty.gov).

The following information is needed to set an expedited motion: The strikethroughs are all in KCMS.

- The case name
- Cause number
- Prosecutor and defense attorneys' names
- The type of motion

Counsel who have a matter on the Expedited Motions Calendar and have an 8:30 Motion in a trial court shall report first to the trial court. Motions noted on the Expedited Calendar that are not ready to be heard by 9:00 because all counsel and the defendant are not present may be stricken at the discretion of the judge presiding over the expedited motion calendar.

#### 14.3 NOTICE

The party who schedules the motion must notify opposing counsel, [CrR 8.2](#), [CR 7\(b\)](#).

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## 15 CRIMINAL MOTIONS

### 15.1 CALENDAR

Criminal motions are set according to the following schedule:

Calendar	Day of the Week	Time	Location
Seattle	Monday- Thursday	1:30	Assistant Chief Criminal Courtroom
Kent	Friday	9:00	Rotates

### 15.2 SETTING A CRIMINAL MOTION

To set a motion, please use the following contact information:

- Seattle: 477-1441, [seacriminalmotions@kingcounty.gov](mailto:seacriminalmotions@kingcounty.gov).
- Kent: 477-2733, [barbara.winter@kingcounty.gov](mailto:barbara.winter@kingcounty.gov).

Special settings can be made available for lengthy motions and to accommodate attorneys in trial. The party setting the motion must provide notice to opposing counsel.

The following information is needed to set a criminal motion:

- The case name
- Cause number
- Prosecutor and defense attorneys' names
- Custody status
- Trial date
- Expiration date
- The computer Control Number (CCN) if defendant is in custody
- Type and length of motion

Motion documents must be filed before a motion can be set. Motions will be set no sooner than 6 court days from the date the motion is filed or within 6 days of the trial date absent an order shortening time. Orders shortening time should be presented to the criminal motions judge. The moving party shall comply with [LCR 7\(b\)\(10\)](#).

### 15.3 MOTIONS CALENDAR LIMITED

Motions that are brought pursuant to [CrR 3.5](#) and [CrR 3.6](#) and require witness testimony are reserved to the trial judge unless otherwise permitted by the Assistant Chief Criminal Judge or Chief MRJC Judge.

Except for expedited motions heard by the Chief Criminal Judge or Chief MRJC Judge, all other criminal motions are heard by the Assistant Chief Criminal Judge in Seattle or the Criminal Motions Judge in Kent on the Criminal Motions Calendar. These include:

- Motions for discovery
- Motions to amend (may also be heard at case-scheduling or omnibus)
- Motions to sever or join counts or join defendants
- Contested motions to establish the competency of the defendant to stand trial (Seattle)
- Motions for forced medication
- Motions to compel disclosure of a confidential informant
- Motions to dismiss (other than State's motion to dismiss)
- Other motions referred to the calendar by the Chief Criminal Judge or Chief MRJC Judge.

Counsel shall not be excused from a trial in progress to attend a motion argument. Rather, they must arrange for coverage of the motion if they are in trial.

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx):

## 16 GUILTY PLEAS

Except in a capital case, a guilty plea may be entered at the time of arraignment or at any time thereafter before trial. However, if the plea is not heard during a case scheduling or omnibus calendar, the plea must be set by contacting the sentencing coordinator or designee. The trial judge will hear the guilty plea after a case has been assigned to court for trial.

At the taking of the plea, or shortly thereafter, the Criminal Department Sentencing Coordinator(s) shall assign a date and a time for sentencing, unless sentencing is to occur directly following entry of a plea.

If a guilty plea is entered after the setting of the trial date, an order striking the trial date shall be entered with the court clerk.

Once a guilty plea has been entered, any request for bail reduction or personal recognizance release pending sentencing shall be referred to the sentencing judge, provided that a judge not serving as a judge pro tempore who takes a plea of guilty may make a bail or release decision at plea.

### 16.1 MOTIONS TO WITHDRAW GUILTY PLEA

Motions to withdraw a guilty plea shall be presented to the judge who took the plea or to the sentencing or supervising judge if the plea judge is not available or was a judge pro tem.

If the defendant expresses a desire to withdraw his/her plea before or at sentencing, the sentencing court should continue the sentencing to give defense time to file a written motion and declaration to be served on the judge who took the guilty plea or the sentencing judge if the plea judge is not available or was a judge pro tempore. If the plea judge determines that there is an insufficient basis to withdraw the plea, either on the pleadings or after a hearing, the judge should enter an order denying the motion and advise the sentencing judge that the motion was denied.

If the judge that hears the plea grants the motion to withdraw the guilty plea, then it is the prosecutor's responsibility to place the case back on the case scheduling calendar and to notify defense counsel of the next scheduled case setting hearing.

If the motion for withdrawal is made after judgment, it shall be governed by [CrR 7.8](#).

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## **17 TRIALS**

The Criminal Trial Calendar is prepared by the Criminal Department staff. The Chief Criminal Judge or Chief MRJC Judge, in consultation with staff, decides which cases are assigned to trial. On the court day before trial, staff shall notify counsel by e-mail and/or telephone of the courtroom and time the trial is to commence. Trials may also be placed on standby status for the next court day, which means counsel and the defendant may be notified to commence trial on one-half hour's notice if an earlier trial resolves.

It is presumed that the parties are ready for trial and will proceed to trial without recesses if a party does not notify the court the day before trial that it will be seeking a continuance or recess. Trials are expected to proceed continuously until concluded. If the trial judge finds that a case requires a recess longer than one day, the trial judge shall first consult with the Chief Criminal Judge or Chief MRJC Judge about the proposed recess.

### **17.1 TRIAL CONTINUANCE**

It is expected that trial will occur on the date set at the Case Scheduling Hearing and confirmed at the Omnibus Hearing and that the defendant(s) and witnesses will be available at the designated time.

It is the Criminal Department's goal to assign to trial as many cases as possible each day in an effort to assure trial date certainty and reduce the present backlog of criminal cases.

Once a trial date is confirmed, any change in the trial date will be granted, only upon motion, by the Chief Criminal Judge or the Chief MRJC Judge, for good cause on the basis of unforeseen circumstances.

If a case has been assigned to a courtroom for trial and the judge believes a continuance may now be warranted, the case shall be immediately returned to the Chief Criminal or Chief MRJC Judge for ruling on the motion. Continuance motions are not properly heard by the trial judge, except if authorized in an order of pre-assignment.

### **17.2 CASE ASSIGNED TO TRIAL**

In assigning cases for trial, the court will endeavor to give priority to cases where time will expire under the speedy trial rule, to in-custody defendants over out-of-custody defendants, to earlier-filed cases over later-filed cases, to cases involving interpreters, to cases where

defendant has never waived his or her right to a speedy trial, and to cases with witness availability and other scheduling limitations.

Counsel can expect to be assigned to a judge as soon as a court and counsel are available.

If counsel or defendant are not ready to proceed when a case is assigned to a judge, the case shall immediately be returned to the Chief Criminal Department for reassignment and a case that is ready will be assigned to that court room.

Any motion to continue the trial date or motion for substitution of counsel shall be heard by the Chief Criminal or Chief MRJC Judge.

The staff shall advise by telephone or e-mail each trial court of its assignment for the next day, shall advise the jail of defendants who are required to appear in court, shall advise the office of interpreter services if an interpreter is needed, shall advise the jury room of anticipated jury trials, and shall advise counsel of the courtroom and time the trial shall commence.

### 17.3 CASE ON STANDBY

The Criminal Department staff closely monitors all standby cases. As soon as an attorney clears, the standby case is immediately assigned to a judge by the Criminal Department staff.

Should the case be placed on standby, the defendant(s) and any necessary witnesses must be available for trial within 30 minutes or at the time assigned by the Court.

In the event that an attorney is scheduled for trial for more than one case, priority is given to the following cases:

- In-custody over out-of-custody defendants
- Cases with earliest arraignment date
- Co-defendant cases
- Cases with attorney, interpreter or witness availability problems
- Cases with the earliest expiration date.

When an attorney is assigned to trial, his or her other cases are put on standby status. In the event the priority case is resolved, the case on standby is immediately assigned to an available judge.

An attorney who has a case scheduled on the calendar and who will complete another trial during the scheduled trial day is put on a standby status or may be assigned to an available judge.

If the attorney does not conclude another trial and become available, a Criminal Department staff member will prepare an order continuing trial, stating the reason for the continuance, and present the order to the Chief Criminal Judge or Chief MRJC Judge for signature.

The Criminal Department staff stays in contact with all assigned judges obtaining updated information on trial status. Interested persons may contact the Criminal Department Staff for updated information.

#### 17.4 TRIAL CALL

The Court will conduct a "Trial Call," for all criminal cases scheduled to begin trial the next court day. The Court will announce which cases are to be assigned out for trial, and the reasons for any that are continued. Only those defendants representing themselves will routinely be brought to court for the Trial Call. The Court will continue to notify counsel of the results of the Trial Call by way of the court's website, but counsel may appear at the Trial Call and be heard if they desire.

##### Seattle:

In Seattle, the Trial Call will take place in E-1201, immediately following the case setting calendars on Monday through Thursday, and immediately after the SRA calendar on Fridays.

##### Kent:

In Kent, the Trial Call will take place in GA, at the beginning of the case setting calendars (approximately 1:10 p.m.) Monday through Wednesday, and at the beginning of the SRA calendar (1:30 p.m.) on Fridays.

#### 17.5 MISTRIAL

##### Hung Jury

If the case is to be re-tried, it is the prosecutor's responsibility to place the case back on the case scheduling calendar for new omnibus, trial and expiration dates, and to notify defense counsel of such hearings.

##### During Trial

The trial judge shall contact the Chief Criminal Judge or Chief MRJC Judge to determine how to proceed following the declaration of a

mistrial. The following may occur after a mistrial is declared during trial:

- If there are no scheduling issues, the Chief Judge may immediately send the trial back to the same trial judge for retrial.
- The Chief Judge may pre-assign trial back to same trial judge.
- If it is determined that the trial will go back to the Criminal Department for case setting, the trial judge will enter an order sending parties immediately back to Chief Criminal or Chief MRJC for new case scheduling date & expiration.

**17.6 NEW TRIAL FOLLOWING ORDER, WITHDRAWAL OF PLEA, OR REMAND**  
Following the granting of a motion for new trial, withdrawal of guilty plea, or remand from the Court of Appeals, the prosecuting attorney shall immediately note the matter for a case scheduling hearing. The case will be assigned for trial consistent with the above procedures.

Forms Available Online at  
[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx)

## **18 FAILURE TO APPEAR/MOTION TO QUASH**

If a defendant fails to appear for a hearing or trial, the process for rescheduling the hearing and addressing any outstanding warrants will depend on the hearing that was missed.

### **18.1 ARREST WARRANT/ARRAIGNMENT**

Defendants or defense counsel must contact the Prosecuting Attorney's office to reschedule an arraignment.

### **18.2 BENCH WARRANT AT CASE SCHEDULING**

A defendant or defense counsel must contact Criminal Department staff and the Prosecuting Attorney's office to reschedule a case scheduling hearing and address any outstanding bench warrants.

If the defendant is arrested on the bench warrant, the Prosecuting Attorney's office will reschedule the case scheduling hearing.

### **18.3 BENCH WARRANT AT OMNIBUS OR TRIAL**

Defense counsel may move to quash a warrant issued on or before the trial date by scheduling a motion to quash the warrant before the Chief Criminal or Chief MRJC Judge. The defendant shall be present at the hearing or the motion shall not be considered, absent extraordinary circumstances.

If the defendant is arrested on the bench warrant, the Prosecuting Attorney's office will set a case scheduling hearing to set a new trial date.

### **18.4 BENCH WARRANT AT SENTENCING**

Defense counsel must contact the sentencing judge to schedule a motion to quash the warrant and re-set the sentencing date.

If the defendant is arrested on the bench warrant, defense counsel may contact the sentencing court or the Sentencing Coordinator to reschedule the hearing. The Prosecuting Attorney's Sentencing Unit will also notify the Sentencing Coordinator of defendants who have been arrested on a warrant issued at sentencing.

Other Forms:

- Order Quashing Bench Warrant

## **19 PRE-ASSIGNED CASES**

The Chief Criminal Judge and Chief MRJC Judge may pre-assign a case to a judge for pretrial management and/or for trial, on motion by a party (written motion and declaration) or on the court's own motion.

Once a case is pre-assigned, all pre-trial management is handled by the assigned judge including discovery conferences, the omnibus hearing, and all pre-trial motions, except that motions to continue trial are reserved to the Chief Criminal Judge and Chief MRJC Judge, unless otherwise agreed.

If a motion to continue trial date or withdraw and substitute counsel is granted by the pre-assigned judge, the bailiff shall notify the Criminal Department staff.

Other Forms:

- Order of Pre-assignment

## 20 SENTENCING

If a defendant pleads guilty in the plea court, at omnibus or at case scheduling, the case shall be assigned a sentencing judge by the Criminal Department Sentencing Coordinator(s). It is expected that sentencing will be completed at the time of plea for the following case types:

- VUCSA
- Attempt to Elude
- VUFA
- Failure to Register as a Sex Offender
- Escape
- Bail Jumping
- Other cases by agreement of the parties if the victim can be given appropriate notice.

Sentencings in other case types generally will be set within two (2) weeks of plea or finding of guilt.

Sentencings may be set more than two (2) but not more than four (4) weeks after plea or finding of guilt if:

- Statutory notice must be given to a victim
- The court has ordered a Pre-Sentencing Investigation Report
- Defendant requires additional time to complete an evaluation for Residential DOSA, FOSA, or for a SSOSA
- Either party requires additional time to prepare a request and proposed findings of fact and conclusions of law for an exceptional sentence.

Longer continuances of sentencing may be granted only by the assigned sentencing judge, the Chief Criminal Judge, or the Chief MRJC Judge.

Sentencing hearings are set by the Sentencing Coordinators for Friday afternoons at three times: 1:00, 1:45, and 2:45 p.m. An average of four sentencing hearings are set in each time slot.

A defendant who pleads guilty in the courtroom after the matter is assigned for trial, or who is found guilty by either judge or jury, shall be sentenced by the trial judge. Sentencings for cases in which the defendant pled guilty after assignment for trial or who is found guilty by either judge or jury may be held at 8:30 a.m., 1:00 p.m., or 4:00 p.m. as determined by the trial judge and counsel.

When a sentencing is continued, the assigned judge will keep the case. The sentencing should be continued to that judge's next scheduled Friday afternoon sentencing calendar or to an 8:30 a.m., 1:00 p.m., or 4:00 p.m. setting. Avoid continuing sentencings of in-custody defendants to Friday afternoons when your department does not have a sentencing calendar, as DAJD Court Detail will have difficulty delivering the defendant.

NOTE: Once a defendant is sentenced on a case, that case remains with the sentencing department or department of assignment if it comes from the plea calendar (even if a judge retires and a new one takes over) for any matters requiring judicial review, except those noted on the SRA calendar. Unlike civil cases, criminal cases remain with the judge/department, even when they rotate to another courthouse. However, if the judge rotates to Juvenile Court, the case may have a temporary reassignment for the purposes of a hearing.

#### 20.1 SENTENCING AUTHORIZATION FOR JUDGES PRO TEMPORE

The following criteria were adopted by the Executive Committee of King County Superior Court on December 4, 2007.

1. Judges pro tem may sentence on misdemeanors, excluding domestic violence and sex offenses.

\*Please note: Misdemeanor failure to register is not a sex offense.

2. Judges pro tem may sentence on VUCSA cases, whether felony or misdemeanor, unless there is a request for either a prison based or residential DOSA.
3. Judges pro tem may sign an order for a DOSA evaluation but shall not impose a DOSA. If there is a request for a DOSA, or if the judge pro tem, after reviewing the case, believes a DOSA would be appropriate, the matter shall be placed on the calendar of an elected judge.
4. Both parties must agree for the judge pro tem to sentence even if they have agreed that the judge pro tem can take the plea.
5. If a judge pro tem takes a plea, but the case is not to be sentenced on the day that the plea is taken, the matter shall be assigned to an elected judge for sentencing.
6. If a judge pro tem imposes sentence, a supervision judge shall be appointed.
7. A judge pro tem has the discretion to decline to impose sentence, even when authorized by this policy, if the judge pro tem believes the case presents issues more appropriately addressed by the judge who will be supervising the case. In such

a situation, the judge pro tem shall direct that the matter be scheduled on the sentencing calendar of an elected judge.

8. A judge pro tem cannot order release pending sentence, even if agreed. The issue shall be referred to the sentencing judge, or if the sentencing judge is unavailable, to the Chief Criminal Judge (Seattle) or Chief MRJC Judge (Kent).

9. The Chief MRJC Judge and the Chief Criminal Judge may expand this sentencing authority for specific cases.

## 20.2 POST TRIAL/PLEA RELEASE

Once a defendant has been found guilty, all other matters, including bail or release, shall be heard by the sentencing judge, provided that a judge not serving as judge pro tempore who takes a plea of guilty may make a bail or release decision at plea.

## 20.3 SENTENCING CALENDARS

Sentencing calendars are held Friday afternoons between 1:00 p.m. and 4:30 p.m.

The Sentencing Coordinators shall endeavor to assign sentencing hearings equally among all criminal and civil department judges and will assign each judge no more than twelve defendants for mainstream sentencing hearings or ten for domestic violence sentencing calendars.

A judge will notify the Sentencing Coordinator of scheduled leaves before the preparation of the annual sentencing assignment rotation schedule.

Once a judge is assigned to a sentencing calendar, he or she will arrange for coverage if he or she becomes unavailable, except that the Sentencing Coordinator will find a replacement if the judge is unexpectedly on Family or Medical Leave.

## 20.4 SCHEDULING SENTENCING HEARINGS

The Sentencing Coordinator assigns a sentencing judge and a sentencing date immediately after the defendant enters a guilty plea or is found guilty.

The Sentencing Coordinator selects sentencing dates to meet the timely sentencing requirements of [RCW 9.94A.500](#) and the court's sentencing policies as described above.

Any change in sentencing date must first be approved by both parties and by the assigned sentencing court. If one party is seeking a

continuance of sentencing to which the other party objects, the matter shall be noted for a motion to continue sentencing before the assigned judge. A copy of the Notice of Change of Sentencing Date form must be given to the Criminal Department Sentencing Coordinator to avoid oversetting the sentencing judge.

When a sentencing hearing is continued, it will be heard at a later date by the judge to whom the sentencing was originally assigned.

#### 20.5 DEPARTMENT OF CORRECTIONS PRESENTENCE REPORT

Unless specifically waived by the Court, the Court shall order the Department of Corrections to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter [69.50](#) RCW, a criminal solicitation to commit such a violation under chapter [9A.28](#) RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense, [RCW 9.94A.500](#).

In addition, the Court shall, at the time of plea or conviction, order the Department of Corrections to complete a Presentence Investigation Report (PSI) before imposing a sentence upon a defendant who has been convicted of a felony sexual offense, [RCW 9.94A.500](#).

- **At the time of plea**, the Plea/Sentencing Coordinator prepares the cover page of the Order for Presentence Investigation Report (in cases for which a PSI is required by statute) and routes to the Department of Corrections PSI unit. The original order is routed by the Plea/Sentencing Coordinator to the assigned sentencing court- The original will be signed by the sentencing judge and then filed.

The Department of Corrections report and reports by the State and defense counsel are required by King County [LCrR 7.1\(a\)](#) to be submitted to the sentencing judge at least three days prior to sentencing.

#### 20.6 EXCEPTIONAL SENTENCES

Counsel who move for an exceptional sentence shall follow the following procedures:

- Give notice to the court and opposing counsel that counsel will be presenting a motion for an exceptional sentence;

- Prepare Findings of Fact and Conclusions of Law supporting the exceptional sentence and submit them to the sentencing judge and opposing counsel with the pre-sentence report;
- If sentencing is anticipated to take more than 15 minutes, reschedule the sentencing date with the sentencing court;
- Notify opposing counsel of the rescheduled time and date.

#### 20.7 COURT COSTS

At the sentencing, the Department of Judicial Administration will provide a computer printout of costs incurred by the case.

#### 20.8 CREDIT FOR TIME SERVED

The Department of Adult Detention will provide a certification of jail time and other custody credit (EHD, Enhanced CCAP) already served by the defendant. It is preferable to indicate on the sentencing form that DAJD shall calculate credit for time served, as the court may not be aware at sentencing of all factors that affect the amount of credit.

#### 20.9 INFORMATIONAL FORMS

A number of informational forms must be provided to the defendant at sentencing, depending on the sentencing options used:

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx):

## 21 SENTENCING VIOLATION HEARINGS

Sentence violation hearings are sometimes referred to as sentence modification or probation violation hearings.

Unless the assigned sentencing or supervising judge chooses to hear the matter, all hearings are handled on the out of custody SRA (Sentencing Reform Act) calendar in Seattle, or the in-custody SRA calendars in Seattle and Kent every Friday. If the defendant denies the allegations, the hearing will be stricken from the SRA calendar and set before the sentencing or supervising judge. Below is a table of the calendars:

<b>Calendar</b>	<b>Day of the Week</b>	<b>Time</b>	<b>Location</b>
Seattle SRA Calendar – Out-of-Custody	Friday	1:00	E-1201
Seattle SRA Calendar – In-Custody	Friday	1:00	E-1201
Kent SRA Calendar – In-Custody	Friday	1:30	GA

Post sentencing remands of WER/EHD/CCAP are heard on the in-custody SRA calendar unless the sentencing judge specifically requests a hearing.

Post sentencing modification or probation violation hearings in residential DOSA cases should ordinarily be handled by the Drug Diversion Court Judge.

## **22 MATERIAL WITNESS WARRANT/HEARING**

### **22.1 IN-STATE WITNESSES**

Upon motion of the prosecuting attorney or defense counsel, a judge may issue a warrant, subject to reasonable bail, for the arrest of a material witness, [CrR 4.10](#).

The attorney requesting the material witness warrant shall advise the Chief Criminal Judge or the Chief MRJC Judge as soon as the witness is taken into custody. The judge shall hold a hearing no later than one judicial day after the witness is arrested and present in the county from which the warrant is issued, [CrR 4.10\(b\)](#).

If the witness is indigent, counsel shall be appointed for the hearing. The court will notify the Department of Public Defense (DPD) when a material witness warrant is signed so that initial screening for conflicts can be completed by DPD. The Prosecuting Attorney shall contact DPD upon arrest to assure that the witness is represented. Counsel will not be appointed until after DPD has been notified that the witness has been taken into custody.

Upon determination that the testimony of the witness is material and that one of the three conditions in [CrR 4.10\(a\)](#) exists, the judge shall set conditions for the witness to be released in accordance with [CrR 3.2](#).

The judge may hold the witness if the testimony cannot be secured adequately by deposition and if further detention is necessary to prevent a failure of justice.

### **22.2 OUT-OF-STATE WITNESSES**

Requests for a certificate requesting an out-of-state material witness to attend a trial or hearing in this state will be made to the Chief Criminal Judge or Chief MRJC Judge, consistent with [RCW 10.55.060](#).

The certificate requesting an out-of-state witness to attend a trial in Washington State shall be presented to the court in the county in which the witness is found.

It shall state the facts upon which the certificate is based and specify the number of days the witness will be required to attend.

An out-of-state witness who has appeared in this state shall not be required to remain longer than the period mentioned in the certificate unless otherwise ordered by the Court.

The issuance of such a certificate is not mandatory upon the receiving court. Granting or denying such a certificate is largely discretionary with the out-of-state court.

The person requesting court assistance in procuring witnesses has the burden of establishing to the satisfaction of the court that the witness is material. The mere assertion that the witness is material is insufficient.

If the witness fails, without good cause, to attend and testify at the hearing or trial, the witness may be punished by the Court for violation of the summons.

## 23 PRO SE DEFENDANT

A defendant charged with a crime has a federal and state constitutional right to represent himself. The court must engage in a detailed colloquy with any defendant who requests pro se representation. The Criminal Benchbook contains a proposed colloquy. The trial court must make oral findings that the defendant's decision is a knowing, intelligent, and voluntary waiver of his right to counsel. The court must also make findings if the court denies the request for pro se representation.

The defendant must be competent; i.e., must understand the charges, the proceedings, and be able to assist his lawyer. There is no requirement that the defendant's decision be wise and the court may not deny the request simply because the court believes the defendant will do a poor job of self-representation.

The court may deny the request of a competent defendant only in very limited circumstances, for example if the defendant has demonstrated that he will disrupt trial proceedings, or if he is making the request on the eve of trial, or if he has repeatedly changed his mind about self-representation.

Pro se defendants shall receive a copy of the Criminal Department Manual.

Other Forms:

- [Notice of Appearance Pro Se](#)
- [Pro Se Packet](#)

## 24 RALJ

Appeals of District Court and Municipal Court criminal convictions are governed by RALJ (Rules of Appeal from Courts of Limited Jurisdiction). Appeals from Municipal Courts are filed in the Seattle or Kent case designation area according to the location of the originating court. All appeals from District Courts are filed in Seattle.

At filing, the Clerk issues a case schedule that governs all case events from filing through hearing. Criminal RALJ judge re-assignments after initial filing shall be made by the Seattle Chief Criminal Judge for Seattle appeals or the MRJC Chief Judge for Kent appeals.

Forms Available Online at

[www.kingcounty.gov/courts/scforms/criminal.aspx](http://www.kingcounty.gov/courts/scforms/criminal.aspx):

- [Motion to Amend Case Schedule](#)
- [Stipulation Re: Briefing Dates in RALJ Appeal](#)