

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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MEMORANDUM

**TO: Assignment Judges
Criminal Presiding Judges**

FROM: Glenn A. Grant, J.A.D. 

**SUBJ: Criminal – Protocol for Prioritization of Cases and Resolving Conflicts in the
Criminal Division Post Criminal Justice Reform**

DATE: August 23, 2017

This memorandum promulgates a statewide protocol approved by the Judicial Council at its July 13, 2017 meeting for prioritizing cases when scheduling them in the criminal division, particularly when scheduling conflicts occur. These conflicts can arise within a county or between counties, whether due to judicial resources, attorney conflicts or the availability of testimony from a material witness or expert. The protocol has also been endorsed by the Conference of Criminal Presiding Judges, Conference of Criminal Division Managers, and the Management and Operations Committee.

Because of the fundamental changes in how defendants and their cases are processed in the Criminal Division in light of Criminal Justice Reform (hereinafter CJR), the Conference of Criminal Presiding Judges was asked to recommend guidance to assist vicinages in categorizing criminal cases for scheduling and resolving calendaring conflicts.

The case prioritization contained herein is not intended to fit all scenarios that can occur in processing cases. A one-size fits all approach is not practical. There will often be times that the categorization framework described below will need to be modified following a fact-sensitive analysis as to the pending circumstances. Nevertheless, it is essential under Criminal Justice Reform for Assignment Judges and Presiding Judges to work together to resolve calendaring conflicts in light of the case categorization set forth herein.

I. Priority of Cases

The speedy trial requirements on the amount of time an eligible defendant can be detained before trial created an implied disposition standard that prioritizes trials for these cases pursuant to N.J.S.A. 2A:162-22. However, this statutory speedy trial requirement

applicable to detained eligible defendants does not lessen the concerns for the deprivation of liberty interests for defendants incarcerated prior to January 1, 2017. All cases where a defendant is incarcerated need to be prioritized; therefore, the highest priority or the first category has been allocated to defendants who are incarcerated both pre- and post- January 1, 2017.

With those principles in mind, the following sets forth the prioritization of criminal division cases listed in order of priority from highest to lowest:

(1) Cases where the defendant is incarcerated should be given equal priority:

- (a) Post- January 1, 2017 cases in which the detained eligible defendant falls under the speedy trial requirements; and
- (b) Pre- January 1, 2017 cases where the defendant is incarcerated;

(2) Cases in which the eligible defendant is subject to electronic monitoring;

(3) Cases in which the defendant was released on bail prior to January 1, 2017;

(4) Cases in which the eligible defendant is being monitored by the Pretrial Services Program for conditions of pretrial release other than electronic monitoring; and

(5) Cases in which the defendant was charged on a complaint-summons.

II. Summary of Categories

1. Incarcerated defendants Pre- and Post- January 1, 2017

The first category consists of cases where the defendant is incarcerated pre- or post-January 1, 2017, and as such are to be prioritized equally.

(a) Post-January 1, 2017 cases in which the eligible defendant falls under the Speedy Trial Requirements

The CJR law (N.J.S.A. 2A:162-22) establishes speedy trial requirements limiting the amount of time an eligible defendant can be detained before trial. Except when the court orders excludable time for reasonable delays, defendants cannot remain in jail for more than 180 days following the return or unsealing of the indictment, whichever is later, before commencement of trial. If the trial does not commence within that period of time, the eligible defendant shall be released from jail unless the court makes certain findings. For instance, on motion of the prosecutor, the court may permit additional time for the prosecutor to commence trial if it finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, such that no appropriate conditions for release could reasonably address that risk, and it also finds that the failure to commence trial was not due to unreasonable delay

by the prosecutor. See also R. 3:25-4(c)(4)(B) (permitting an additional period of no more than 60 days in which the trial shall commence. If exceptional circumstances are shown, the court may allocate an additional reasonable period of time to commence trial).

The CJR law also provides that the eligible defendant shall be released from jail after a release hearing if, two years after issuance of the pretrial detention order, excluding any delays attributable to the defendant, the prosecutor is not ready to proceed to voir dire, opening argument, or to the hearing of any motions reserved for the time of trial. N.J.S.A. 2A:162-22b(2)(a). See also R. 3:25-4(d)(1). If the defendant's most serious charge is a fourth degree offense, the maximum incarceration period is 18 months. R. 3:25-4(d)(1).

Because of these statutory requirements to release the eligible defendant if the speedy trial deadlines are not met, these cases must be strictly monitored. In addition, the demands to meet the speedy trial deadlines will require that court staff are proficient in calendar management.

When cases are drawing near the two-year deadline and the prosecutor indicates readiness for trial, a judge will need to be ready to proceed. In the event that all the criminal division judges are already conducting trials and the prosecutor is ready to proceed on a speedy trial case, a judge from another division may be called upon to preside over that trial. Therefore, judges and staff in other divisions need to be familiar with criminal procedures. To prepare for these circumstances, arrangements should be made locally to cross-train staff.

Jury managers also need to be cognizant of the speedy trial deadlines and that additional juror summons may need to be issued should those cases proceed to trial.

(b) Pre- January 1, 2017 cases where the defendant is incarcerated

These pre- January 1, 2017 cases where the defendant is incarcerated are already being prioritized by Assignment Judges. As part of that effort, the Judicial Council continues to conduct monthly reviews of each county's ten oldest cases and cases over 700 days old where the defendant is also incarcerated. In weighing these cases, the length of time that the defendant is incarcerated should be taken into account, as well as the age of the case. To assist in this determination, the monthly report has been updated to include the most recent county jail commitment date.

2. Cases in which the eligible defendant is subject to electronic monitoring

This category consists of eligible defendants who are subject to electronic monitoring by Pretrial Services. While there is no statutory speedy trial timeframe for eligible defendants released in the community, these cases need to be prioritized as these defendants are generally high-risk and electronic monitoring has proven to be extremely resource intensive. Additionally, Pretrial Services staff should be closely monitoring these cases in the event that charges are downgraded or the case is remanded. The court can then determine whether to modify this condition.

3. Cases in which the defendant was released on bail prior to January 1, 2017

This category consists of pre- January 1, 2017 cases in which the defendant has been released ROR or posted monetary bail. It is important to prioritize these cases to address and reduce the backlog.

4. Cases in which the eligible defendant is being monitored by the Pretrial Services Program for conditions of pretrial release other than electronic monitoring

This category includes cases where the eligible defendant is not subject to electronic monitoring, but still falls under the Pretrial Services Program because he or she was released on other pretrial release conditions.

5. Cases in which the defendant was charged on a complaint-summons

This final category consists of cases in which the non-eligible defendant is charged on a complaint-summons, both pre and post-CJR.

III. General Approach

Cases that do not lend themselves to defined categories will need to be handled on a case-by-case basis. For example, multi-defendant cases may not readily fall within a single category, and the prioritization may instead be dependent upon the defendant with the highest prioritization, barring other more pressing circumstances. In other words, the defendant whose case falls in the highest category amongst the co-defendants would determine the priority.

Similarly, cases that fall under the circumstances below may not lend themselves to the above categorization, but instead may require prioritizing based upon the nature of the case or the surrounding circumstances:

- (1) Multi-defendant cases where the attorneys are ready to proceed.
- (2) Attorney conflicts whether within the county or between counties.
- (3) Where there are multiple speedy trial cases, the final analysis may be dependent upon victim or expert availability.
- (4) Where there are multiple incarceration cases falling in the first category, the controlling factor may be the length of time the defendant was incarcerated. For example, a non-eligible defendant incarcerated prior to January 1, 2017, and a post January 1, 2017 case in which the eligible defendant is detained but the speedy trial deadline to commence trial is not imminent.

IV. Dismissal List

One area that may need further revision in light of CJR is the dismissal list. The goal for pre- January 1, 2017 cases was to review the post-indictment cases before the 120 days backlog goal or the oldest pre-indictment cases. Going forward, a separate review list for the pre-CJR cases where a defendant is incarcerated and/or the speedy trial cases might be beneficial. It may also be helpful to keep this prioritization in mind when reviewing these cases.

Any questions or comments regarding this memorandum may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by phone at (609) 815-2900 ext. 55300 or via email at Sue.Callaghan@njcourts.gov.

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Melaney S. Payne, Special Assistant
Ann Marie Fleury, Special Assistant
Vance Hagins, Chief, Criminal Practice
Criminal Division Managers and Assistant Managers
Maria Pogue, Assistant Chief, Criminal Practice