

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Initial Criminal Procedures Protocol
During Covid-19 Pandemic

March 16, 2020

All preliminary proceedings in criminal cases (initial appearance, preliminary hearing, arraignment and detention hearings) will proceed in the normal course unless the Magistrate Judge determines that one of the provisions set out below applies. It is anticipated that video/telephone technology will be used to the greatest extent feasible. These protocols are subject to revision at any time by general directive, or to modification in a specific case, at any time.

I. New arrests

a. The government is not seeking detention

The Court, Pretrial Services and the Federal Public Defender (“FPD”) will be notified via the usual protocol. The Magistrate Judge will provisionally grant the appointment of counsel pending the submission of a financial affidavit at a later time, unless informed that the defendant has retained counsel. Pretrial Services will prepare a report with the information available. If the defendant is in the custody of the arresting agency, it is anticipated that the Magistrate Judge will conduct a telephone/video initial appearance. The arresting agency will endeavor to provide an electronic means of confidential communication to the defendant with his/her attorney. The use of video is the preferred procedure. A telephone proceeding will be provided if video capability is not available. The arraignment will be scheduled to occur at a later time, and defense counsel can waive the defendant’s arraignment appearance. If an arrest is pursuant to a criminal complaint, the Magistrate Judge will schedule a preliminary hearing pursuant to Fed. R. Crim. P. 5.1, to the extent practicable.

If no attorney is available in a reasonably timely manner, and it appears that the defendant is subject to release upon processing, in order to facilitate the release of the defendant from custody, the Court may consider proceeding with the initial appearance in the manner set forth above and will enter an appropriate order of release which will be transmitted to the arresting agency and provided to the defendant. The order of release will include instructions for the defendant to telephonically contact Pretrial Services as well as instructions that the defendant must appear for an arraignment when so ordered by the Court.

b. The government is seeking detention

The above protocol is followed. At the time of the initial appearance by telephone/video, the Magistrate Judge will determine whether the parties can agree to a release plan and conditions of release. If not, the defendant may be asked to waive the detention hearing if there is an impediment to release because of a detainer, or otherwise. Otherwise, a detention hearing will be scheduled by the Magistrate Judge in timely manner via available telephone/video options.

Under any circumstances, if the defendant is hospitalized, defense counsel will be appointed and notified of the charges and the Magistrate Judge will enter an order stating that the proceeding will be scheduled at a time and in a manner which is appropriate under the circumstances, as would be the case in the ordinary course in the event of a hospitalized defendant.

II. Defendants subject of a summons

The Magistrate Judge will appoint counsel to the defendant who may file a motion to delay all proceedings for a reasonable amount of time as circumstances may suggest. The Magistrate Judge may also *sua sponte* enter such an order. If a proceeding is scheduled, the appropriate protocol as described above will be utilized, if applicable.

III. Defendants subject to an arrest warrant who self-surrender

A defendant who self-surrenders may be turned away if not medically cleared to enter the courthouse. The United States Marshal Service will immediately notify the Assistant United States Attorney assigned to the case, the charging agency, the FPD and the Magistrate Judge.

IV. Pretrial bond violation and supervised release revocation proceedings

If the defendant is currently detained or incarcerated in a facility, proceedings will be scheduled to occur at a later date. If the defendant is not currently detained or incarcerated, the scheduling of hearings on technical violations or violations not posing a threat to the public safety may be postponed at the discretion of the Magistrate Judge. Otherwise, the above described protocol which is appropriate to the defendant's medical clearance, will be followed.

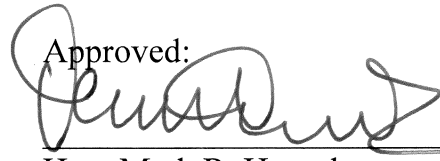
V. Superseding indictments

Upon the filing of a superseding indictment, the above described protocol which is appropriate the defendant's medical clearance will be followed. Defense counsel may file

motions for postponement of the arraignment. If the defendant is currently being held in a detention facility, the proceeding will be scheduled by the Magistrate Judge to occur as soon as is practicable by an appropriate means. In the case of a superseding indictment, the Magistrate Judge is authorized to extend the time for filing pretrial motions by thirty (30) days.

Please note, it is anticipated that the parties will consent to video/telephone proceedings when requested to do so. The specific means of video/telephone proceedings and communications will be implemented in consultation with the Court's IT division, as well as the relevant detention facilities and agencies.

Dated this 16TH day of March, 2020.

Approved: 

Hon. Mark R. Hornak
Chief United States District Judge