

Why This Bench Card? To help mitigate unnecessary case delays for individuals detained pretrial, and ensure adherence to the discovery and bail statutes, without abrogating due process and other constitutional rights of the accused.

Overview of the Timeline: Cases must be disposed, or a trial must commence, by the sixth Supreme Court appearance—24 weeks post-indictment.

All Court Appearances and Conferences to include:

- *Reviewing bail status* to determine whether pretrial conditions remain the **least restrictive necessary** to ensure the defendant’s court appearance and compliance with conditions. If money bail is deemed necessary and the defendant is detained, reconsider whether forms and amounts are affordable.
- *Stating goals and action items* for current and upcoming appearances, as well as off-calendar obligations.
- *Monitoring adherence* to discovery obligations.

Case Processing Guidelines

Filing of the Indictment to Supreme Court Arraignment

- *On 180.80 day:* Case to be adjourned for **two weeks** for Supreme Court arraignment.

1st Appearance: Supreme Court Arraignment (2 weeks post-indictment)

- *Bail Review:* Ensure pretrial conditions are the least restrictive necessary (see “*Reviewing bail status*” above).
- *Discovery:* Prosecution turns over all “automatic” discovery to defense **within 20 days of Criminal Court arraignment** (35 days if the defendant is out, per statute). Prosecutors state on the record their efforts to obtain voluminous materials not yet in their possession, and whether they are requesting a 30-day stay for these materials (e.g. video surveillance, body camera, dashboard camera footage, DNA reports, and medical records).¹
- *Protective Orders:* Prosecution makes request for a protective order, if necessary. Court must conduct a hearing **within three days of the request**.
- *Grand Jury Minutes:* Judge orders prosecutors to turn over grand jury minutes to the Court **within two weeks off-calendar** (if they were not already disclosed and review of the minutes is required).²

Adjournment: Four weeks for automatic discovery to be completed and grand jury minutes to be turned over off-calendar and for decision on the grand jury minutes, if required.

2nd Appearance: Discovery & Decision on Grand Jury Sufficiency (6 weeks post-indictment)

- *Bail Review:* Ensure pretrial conditions are the least restrictive necessary.
- *Discovery:* Prosecutors turn over discovery that is voluminous or not initially in their actual possession **within 50 days of the Criminal Court arraignment**.
- *Certificate of Compliance:* If the prosecutors believe in good faith that they have met their discovery obligation, they should file a certificate of compliance, listing the materials disclosed.
- *Grand Jury Minutes:* Judge serves decision on grand jury minutes on the defense and prosecution. Prosecutor should serve grand jury minutes, including permissible redactions, on defense counsel if they were not already served within the “initial discovery” period.

Adjournment: Four weeks for defense counsel to review discovery and serve reciprocal discovery.

3rd Appearance: Case Conference & Reciprocal Discovery (10 weeks post-indictment)

- *Bail Review:* Ensure pretrial conditions are the least restrictive necessary.
- *Reciprocal Discovery:* Defense turns over reciprocal discovery **within 30 days of the prosecutor’s certificate of compliance** and submits their own certificate of compliance.
 - *Continued Discovery:* Prosecution serves all remaining discovery on defense.

(3rd appearance continued below)

¹ C.P.L. § 245.10(1)(a)(i) & (ii) enumerates the materials that must be turned over as part of “automatic” discovery.

² C.P.L. § 245.20(b) requires the prosecutors to turn over grand jury minutes *expeditiously* when court review is required.

- *Case Conference*: Schedule a **case conference** including the assigned prosecutor, assigned defense attorney, and the judge’s court attorney to discuss strengths and weaknesses of the case; alternatives to bail and detention; any missing discovery; pending factual, legal or discovery issues; any remaining motion practice; the need for a pre-pleading investigation report (PPI); the merits of any plea offer; necessary pretrial hearings; and any barriers to commencing a trial. The case conference should occur “off-calendar” **before the 4th court appearance**.
- *Motion Practice*: Determine what, if any, motions need to be written and served. If motion practice is required for pretrial hearings and/or other legal matters, allow two weeks for the moving party to submit their motion, an additional two weeks for the opposing party’s response, followed by two weeks for the court to prepare a decision.

Adjournment: Six weeks to file any necessary motions for pretrial hearings and/or other legal issues, for the continued disclosure of discovery, and for a case conference to be convened.

4th Appearance: Decision on Pretrial Hearings & Continued Duty to Disclose (16 weeks post-indictment)

- *Bail Review*: Ensure pretrial conditions are the least restrictive necessary.
- *Pretrial Hearings*: Judge renders a decision on which pretrial hearings are granted.
- *Discovery*: If parties have become aware of new discovery, they have a continued duty to disclose and should turn over new materials. If discovery obligations remain to be met, parties should raise the issue and the court should consider appropriate sanctions and remedies for missing discovery.

Adjournment: Four weeks for possible disposition, pretrial hearings, and supplemental discovery. Between court dates, parties should reach a disposition or prepare for a pretrial hearing—including subpoenaing and scheduling necessary witnesses.

5th Appearance: Possible Disposition, Supplemental Discovery, & Hearings (20 weeks post-indictment)

- *Bail Review*: Ensure pretrial conditions are the least restrictive necessary.
- *Possible Disposition*: The purpose of the fifth court appearance is for entry of a plea, if parties have reached an agreed upon disposition. Discovery must be disclosed **7 days before the plea expires**, giving the defendant an opportunity to review the evidence.
- *Supplemental Discovery*: Prosecution serves “supplemental discovery”—a list of the uncharged misconduct or criminal acts intended to be used at trial for impeachment of the defendant or to prove a material issue in the case. This discovery must be turned over no later than **15 days prior to first scheduled trial date**.
- *Supplemental Certificate of Compliance*: If either party has served additional discovery after certificates have already been filed, a **supplemental certificate of compliance** must be served listing the additional materials disclosed.
- *Pretrial Hearings*: If no disposition is reached, the judge should conduct or send the case to another court part to conduct the pretrial hearing. The judge’s decision on the hearing should be served on all parties **within two weeks**.
- *Trial Readiness*: After complying with the discovery obligations listed above, the prosecution should file a certificate of trial readiness if they are actually and presently ready to proceed.
- *Scheduling trial*: The judge should set a firm trial date in **four weeks** in a court part that will be available for trial. Parties should subpoena and schedule witnesses and be prepared to start trial on the next court date.

Adjournment: Four-week adjournment to a trial part (where necessary) for trial. The judge’s decision on the pretrial hearing should be served on all parties off-calendar, within two weeks of the completion of the hearing.

6th Appearance: Trial (24 weeks post-indictment)

- *Bail Review*: Ensure pretrial conditions are the least restrictive necessary.
- *Trial*: A trial should be conducted.

Cases Exceeding Standards and Goals

Where cases exceed 24 weeks:

- *Bail Review*: A formal bail review should be conducted after any case exceeds standards and goals.
- *Cause of Delay*: At first court appearance after 24 weeks, the cause of delay should be stated on the record.
- *Case Conference*: A second case conference should be scheduled for parties to assess possibility of a disposition and identify barriers to case resolution or trial.

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