

Multnomah County Justice Reinvestment Program (MCJRP)

Case Process

- I. MCJRP eligibility and charging instruments:
 - A. Cases are designated MCJRP eligible by the Multnomah County District Attorney's Office. All MCJRP cases carry a presumptive prison sentence greater than 12 months. Eligibility factors:
 - i. Charge type (see list of cases carrying a presumptive prison sentence which are **excluded** from MCJRP, [Addendum 1](#)); and
 - ii. The defendant's criminal history.
 - iii. Defendants are excluded from participation in the MCJRP process, for any case, if there is a concurrent presumptive prison case under prosecution for charges excluded from MCJRP Eligibility.
 - B. Charging instrument: The DA's office will present "MCJRP Eligible" cases by one of two methods:
 - i. Through an Information listing the charges, followed by an indictment; or
 - ii. Directly from a Grand Jury determination.
 - C. Arraignment on Indictment begins the MCJRP process (Day 1 of the MCJRP process).
 - i. At arraignment, defendants are informed if their cases are MCJRP eligible. A one-page information page is handed to defendants at arraignment.
 - ii. At arraignment, an order to appear is generated. Future hearing dates at which the defendant must appear are also indicated:
 1. Case Assignment (or "Call") date, which is usually set around 42 days from arraignment; and
 2. An MCJRP Judicial Settlement Conference (JSC) is set on a Thursday between 42-49 days from arraignment on indictment.
 - D. Defense attorneys should discuss MCJRP eligibility with the deputy district attorney (DDA) assigned to the case.
 - i. The DDA might not have had a complete criminal history at the time the case is charged;
 - ii. The information might have inadvertently not been stamped "MCJRP Eligible".
- II. Timeline for the MCJRP process:
 - A. Day 1: Arraignment on Indictment
 - B. Day 15: MCDA provides Criminal History Report to Defense and DCJ
 - C. Day 21: Deadline to Opt Out of MCJRP
 - D. Day 20-30: Risk Assessment Interview
 - E. Day 40: Deadline for assessment report to be made available to parties.

- F. Day 42: First Case Assignment date. At the first Case Assignment date, the judge will inquire if a risk assessment interview was conducted.
 - G. Day 42-49: Judicial Settlement Conferences (JSCs) take place. All JSCs take place on Thursdays.
 - H. Day 110: Deadline for JSC to be held.
- III. Process between Arraignment and the Pre-adjudication Risk Assessment
- A. After arraignment on indictment:
 - i. Court staff sends a list of new MCJRP eligible defendants to DCJ.
 - ii. DCJ assigns a Probation Officer (PO) to each case. The PO will administer a risk assessment interview, write an assessment report and attend the JSC.
 - iii. At the same time as PO assignment, DCJ schedules the risk assessment interview, within a week of arraignment, and sends an email apprising defense of the interview date. Instructions about how to change the appointment if there is a conflict are included in the letter.
 - iv. Risk Assessment interviews must take place within 21 days from arraignment on indictment.
 - 1. DCJ will prepare the MCJRP historical report for participants who are not interviewed by Day 21. Historical reports are comprised of the defendant's criminal and supervision history.
 - 2. If the Risk Assessment interview cannot take place by Day 21, the defense attorney should contact the MCJRP Coordinator to reschedule the JSC.
 - B. Defense attorney actions required:
 - i. As soon as possible after reviewing the case and learning future dates, defense attorneys must check their calendars:
 - 1. Contact the MCJRP coordinator if there is a conflict or double booking.
 - 2. Contact the PO assigned to the case if there is a scheduling conflict for the date selected for the risk assessment.
 - ii. If the Defendant Assessment Report cannot be completed in time to be available for the JSC, contact the MCJRP coordinator to reschedule the JSC.
 - C. Opt out: If the defendant does not want to participate in the MCJRP process, defense must file a Notice of Intent to Opt Out with 21 days from arraignment on indictment.
 - i. The Notice of Intent to Opt Out shall be filed with the court.
 - ii. Notices filed beyond the opt-out period will not be effective.
 - iii. If defendant files Notice of Intent to Opt Out timely, the case will be processed like other non-MCJRP eligible cases.

1. If DCJ conducted the Level of Service/Case Management Inventory (LS/CMI) interview or a LS/CMI report was generated prior to Day 21 and the defendant opts out, the information shall be electronically “sealed” until the case for which it was generated is resolved or closed.
 2. Cases with timely opt outs may set JSCs with any non-MCJRP judge.
- iv. If the defendant does not opt out, but fails to participate in the risk assessment interview:
1. The defendant may appear only before designated MCJRP judges, including JSCs and Plea/Sentencing hearings.
 - a. The JSC scheduled at arraignment will not be cancelled.
 - b. If the defendant does not want to participate in the court-ordered JSC scheduled at arraignment, defense must request cancellation from either the presiding judge or the criminal presiding judge.
 2. DCJ will prepare a historical (criminal history/past supervision) report for JSCs and plea/sentencing hearings without the LS/CMI results or other pertinent information that usually accompanies the MCJRP Assessment Report.
 3. If a plea agreement is negotiated, or the defendant chooses open sentencing, the plea and sentencing shall be before an MCJRP judge. After input from the defense attorney, DDA and probation officer, in its discretion the court may either proceed with sentencing or may require more information to be gathered regarding the sufficiency of wraparound services available to meet the risks/needs for that defendant (e.g. inpatient or intensive outpatient treatment, housing, etc.).
 - a. If the state has agreed to a probation offer, then, regardless of the additional information gathered, the state will honor its agreement (contract plea) of probation. However, the conditions of probation may alter to reflect the risk/needs of the defendant.
 - b. After reviewing the additional information, the judge may accept or reject the probation agreement. If rejected, the defendant may withdraw the plea.
 - c. If the defendant is sentenced to MCJRP supervision at the same time the plea is taken, then the judge will order the LS/CMI assessment as a condition of probation.

IV. Risk Assessment process

- A. The Risk Assessment interview:
 - i. Risk Assessment interviews take place approximately two to three weeks after arrest; DCJ will provide notice to the defense regarding the time and place of the LS/CMI interview.
 - ii. POs may conduct interviews with or without defense attorneys' presence.
 - 1. When the defendant is available for the interview, but the defense attorney does not appear, the PO will proceed with the interview.
 - 2. Defense attorneys who do not want the interview to go forward without them being present must notify the PO 48 hours before the interview is scheduled.
 - iii. Attorneys may attend the interview telephonically when the technology is available.
 - iv. POs will not inquire about the facts in the underlying case, and MCDA will not use information gathered from the interview to prosecute the underlying case.
 - B. Assessment Report:
 - i. POs write a Defendant Assessment Report (the MCJRP report) from the information collected during the Risk Assessment interview.
 - 1. The report includes the defendant's criminal history and supervision history.
 - 2. The interview/assessment assists the PO to craft a case plan designed to address the defendant's risks/needs. Conditions are suggested based on the defendants risk/needs and the instant offense.
 - 3. The report will be written within one week of the interview.
 - ii. MCDA will not file a notice of the intent to seek an upward departure based on aggravating factors from information gathered during the Risk Assessment interview.
 - iii. The MCJRP coordinator distributes the MCJRP Report to the parties and to the JSC judge as soon as the report is prepared. Additional alcohol and drug evaluation assessments are distributed at the same time if they are available.
- V. Judicial Settlement Conference (JSC)
- A. Participants
 - i. Main participants: defendant, judge, defense attorney prosecutor, probation officer and victim (at victim's request).
 - ii. Participation of defendants' supporters and supporters of the victim of the crime should be considered.
 - B. An MCJRP committee comprised of defense attorneys, prosecutors, probation officers and judges developed [JSC Best Practices](#). After the JSC, the prosecutor

will review the case with senior MCDA deputies and a Chief Deputy (the committee) when formulating a pre-trial offer (PTO) on cases requiring a presumptive mandatory minimum prison sentence.

- i. The attorneys should be in communication not only with each other, but also with the assigned PO, especially when an agreement is reached. If a PTO is issued electronically, the PO should be included in the email.
- ii. A second JSC or further proceeding may be necessary to resolve the case, and such hearings should be scheduled directly with the judge who held the initial JSC.
 1. Second JSCs may be scheduled on any day of the week.
 2. The assigned PO is not required to appear, but the parties may request PO participation either in person or telephonically.

C. Scheduling issues for JSCs

- i. Original setting:
 1. JSCs are scheduled at arraignment on indictment approximately 42-49 days from arrest for in-custody defendants.
 2. Out of custody defendants are required to appear at the court-ordered JSC; failure to appear will result in a warrant being issued.
 3. In the event a defendant does not want to participate in a JSC (but has not opted-out of the program), defense must request the cancellation from the Presiding Judge or Criminal Presiding Judge.
- ii. Rescheduling the JSC set at arraignment:
 1. If the court schedules a JSC in conflict with an attorney's schedule (*e.g.* double-booked court hearings, vacation plans, trial in another case, medical leave) the attorney must, after conferring with opposing counsel, contact the MCJRP Court Coordinator and request a new JSC date. The Coordinator will reschedule the JSC.
 2. If the parties are not prepared for the court-scheduled JSC (*e.g.* late discovery, the MCJRP report not being completed), the parties should contact the Court Coordinator to reschedule the JSC.
- iii. Timing for all requests to reschedule:
 1. Requests must be made as early as possible, but in no event later than the close of business on the Friday before the scheduled JSC.
 2. Requests made by the close of business on the Friday of the week preceding the original JSC setting do not require the approval of the court, unless the set over requested is beyond three weeks of the original JSC setting.
 3. Late requests, within the week of the JSC set at arraignment, must be approved by the Presiding Judge or the Criminal Presiding Judge. The judges will inquire why the request comes late.

- VI. Case resolution: scheduling Change of Plea and Sentencing hearings:
 - A. Ideally, the parties should schedule change of plea hearings with the judge who held the JSC.
 - i. The parties should contact the judge's staff directly
 - ii. The parties should apprise the assigned PO when the hearing is scheduled.
 - 1. If the case resolves with a probationary sentence, POs should be present for out of custody sentencings in order to assist with a smooth transition to probation.
 - 2. POs do not need to be present for in-custody sentencings, but the sentencing order should indicate "release to PO or mentor."
 - B. Less ideally, if the parties reach an agreement and the judge who held the JSC is not available for an extended period, the parties may contact another MCJRP judge to accept the change of plea. The PO should be notified of the hearing; or
 - C. If the parties are unable to schedule the change of plea hearing with an MCJRP judge, the parties may schedule the case to be called on the short matters docket at Case Assignment to be sent out to an available MCJRP judge.
 - 1. The parties should contact the criminal calendaring clerk to request that the case be placed on the short matters docket during AM Call on a Wednesday for a change of plea hearing on Thursday.
 - 2. The parties should communicate directly with the PO about the hearing.
 - D. If an agreement is reached at a Case Assignment hearing, and the parties opt to send the case to an available judge:
 - i. The judge presiding at Case Assignment will attempt to send the change of plea hearing to an available MCJRP judge.
 - ii. The judge accepting the change of plea should set-over sentencing:
 - 1. Sentencing should be scheduled with the MCJRP judge who held the initial JSC.
 - 2. Setting-over sentencing will allow time for the PO to arrange probation services and housing.
 - E. Forms for Change of Plea Hearings
 - i. Addendum to plea petition ([Addendum 2](#))
 - ii. Notice of Conditions for Award of Earned Discharge ([Addendum 3](#))
 - F. Based on negotiations, cases may resolve either with prison sentences or community supervision sentences.
- VII. Considerations regarding community supervision:
 - A. Placement should be based on the assessed risk/need of defendants in coordination with eligibility for specialty courts or other Department of Community Supervision (DCJ) units:

- i. In the course of the risk assessment interview and during preparation of the Defendant Assessment Report, POs review eligibility and suitability for a variety of types of supervision.
 - ii. DCJ developed a reference chart to assist parties and judges for sentencing defendants to the supervision best meeting their risks and needs ([Addendum 4](#)).
 - iii. The judges' temporary sentencing orders at sentencing will use specific language regarding the kind of community supervision imposed ([Addendum 5](#)).
- B. The residency of defendants is a factor determining under which jurisdiction individuals will be supervised:
 - i. Residency is based on self-reporting and collateral information. If an individual reports residence in another jurisdiction, supervision will be transferred to the self-reported jurisdiction.
 - ii. If defendants are currently under supervision in another jurisdiction for another matter, the supervision will be transferred to that jurisdiction.
- C. Options for community supervision:
 - i. MCJRP Intensive supervision.
 - 1. Intensive supervision is based on risk level.
 - 2. See [Addendum 6](#) for complete information regarding MCJRP supervision.
 - 3. The list of Special Conditions of MCJRP Probation can be found in [Addendum 7](#).
 - ii. Specialty Court supervision:
 - 1. **START Court**
<https://www.courts.oregon.gov/courts/multnomah/programs-services/Pages/treatment-courts.aspx>
 - 2. **Mental Health Court**
<http://mcda.us/index.php/community-initiatives-special-programs/mental-health-court/>
 - 3. **DISP**
<https://www.courts.oregon.gov/courts/multnomah/programs-services/Pages/treatment-courts.aspx>
 - 4. **Veterans Court**
 - iii. Supervised probation – MCJRP eligible cases can be supervised by other DCJ field offices:
 - 1. Gang Unit
 - 2. Sex offender unit
 - 3. Domestic Violence (DV)
 - 4. Mental Health unit

5. Family Sentencing Alternative Program (FSAP)
6. SMART Grant

- VIII. Allegations of failure to comply with conditions of community supervision:
- A. At the time of case resolution, defendants agree to the conditions outlined in an Addendum to Plea Petition regarding future allegations of failure to comply with the conditions of probation.
 - i. Generally, Probation Violation hearings will be before the judge supervising the defendant, as indicated in the Addendum to the Plea petition (see [Addendum 2](#)).
 - ii. POs may use administrative sanctions in certain circumstances according to a protocol set out in [Addendum 8](#).
 - B. A committee comprised judges, defense attorneys, prosecutors and POs developed [Best Practices](#) for probation violation hearings.