

FURTHER AMENDED PRACTICE DIRECTION NO 18 OF 2021: CONDUCT OF PROCEEDINGS IN THE HOME CIRCUIT SUPERIOR CRIMINAL COURTS OF TRIAL, MICHAELMAS TERM 2021.

This Practice Direction, issued by the Honourable Chief Justice on 14 September 2021 and amended on 28th October 2021, is hereby further amended and applies to the Home Circuit Superior Criminal Courts of Trial.

GENERAL

1. The amendments to this Practice Direction take effect immediately and will continue in effect until revoked or amended.
2. The following Practice Directions are revoked and superseded by Practice Direction No 18 of 2021, issued on 14 September 2021:

Practice Direction No. 13 of 2021, dated 1st April 2021.

Practice Direction No. 12 of 2020 dated 17th September 2020.

3. The Home Circuit Superior Criminal Courts of Trial ('HCSCCT') comprises the Supreme Court of Judicature (Criminal Division), the Circuit Court Division of the Gun Court, and the High Court Division of the Gun Court sitting at the Supreme Court of Judicature, Public Building East, King Street, Kingston.
4. There will be no ceremonial opening of the HCSCCT for the Michaelmas Term, 2021.
5. The Courts of Jamaica Remote Hearing Guidelines dated September 14, 2021, applies to all hearings being conducted remotely in the RCSCCT.
6. The 'Health Guidelines Governing Access to all the Courts of Jamaica' dated May 27, 2020, except paragraph 10, continue to apply.

DEFINITIONS

7. "Agreed bench trial" means, any trial the prosecution and defence have agreed to conduct before a judge sitting without a jury that is ordinarily tried before a judge sitting with a jury.

10. "Remote hearing" means, proceedings taking place by means of telephone conference call, video conferencing or any other form of electronic communication.

11. "Remote location" means, any place other than inside the courtroom or chambers where a trial or hearing is taking place.

JURY TRIALS IN THE HCSCCT

12. Jury Trials in the HCSCCT are suspended until further notice.

13. In the absence of jury trials, the emphasis will be on agreed bench trials and/or prescribed bench trials.

DISCHARGE OF JURORS

14. Jurors summoned from the parishes of Kingston and St. Andrew, to serve in the Home Circuit during the period **October 29, 2021, to December 20, 2021, ARE NOT** required to attend and are excused without any risk of penalty.

OTHER TRIALS (PRESCRIBED AND AGREED BENCH TRIALS)

15. All agreed or prescribed bench trials in the HCSCCT are to proceed in accordance with the 'Health Guidelines Governing Access to all the Courts of Jamaica' dated May 27, 2020.

16. The Judge must be present in open court.

17. The general rule is that counsel for the Crown and defence must be present in open Court.

18. Notwithstanding paragraph 17, a judge may permit counsel for the Crown or defence to appear remotely in a trial if the circumstances make it just and fair to do so.

19. An application for permission under paragraph 18 must be filed in writing at the relevant registry, at least one (1) week before the scheduled trial date.

20. Where the circumstance requires, the Judge may order an applicant to provide

21. In considering an application under paragraph 19, the Judge must take into consideration the nature of the case, the witnesses involved, the views of the parties, the capability of the court to provide remote hearing facility for the duration of the trial,¹ and whether sufficient measures can be put in place to preserve the integrity of the trial.
22. Where permission is granted under paragraph 18, the Judge must make appropriate Orders, taking into account the nature of the particular case.
23. Any Order made under paragraph 22, must include the terms and conditions under which counsel will be permitted to appear remotely.
24. Other than the sentencing phase of a trial, the general rule is that defendants are to be present in open court.
25. Any defendant in custody who wishes to enter a plea of guilty shall have his matter accommodated, regardless of the date the case is scheduled for trial or any other type of hearing, and such plea may be entered by way of remote hearing.
26. Any defendant on bail who wishes to enter a plea of guilty, shall have his matter accommodated regardless of the date the case is scheduled for trial or any other type of hearing, and must appear in person in open court to enter his plea.

PLEA AND CASE MANAGEMENT HEARINGS

27. Practice Direction (No. 6) (Criminal), 2020 dated 30th of May 2020 applies to all plea and case management hearings.
28. At all times during the plea and case management hearing, the Judge must be present in open court and where the hearing is to be held remotely, then the parties are to be connected to the court in which the Judge is present.
29. Unless the Judge of the plea and case management court orders otherwise, defendants in custody are not to be taken to court and the plea and case management hearing will be conducted remotely.

30. Where the defendant is in custody and the Crown intends to offer no evidence against the defendant, the defendant need not be present in open court and such hearing may be conducted remotely.
31. Where the Crown intends to offer no evidence against a defendant who is on bail, the defendant must appear in person in open court.
32. Paragraphs 25 and 26 apply to defendants in custody or on bail who are listed for plea and case management hearing, as the case may be.
33. Where a plea of guilty is to be entered, counsel for both the Crown and the defence must be present in open court, regardless of whether the defendant is on bail or in custody.

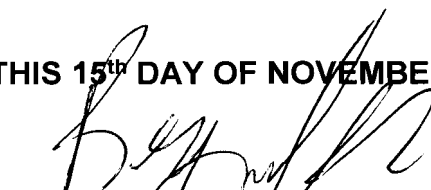
SENTENCING

34. Subject to paragraphs 41, 42, and 43 the general rule is that the judge, counsel for the Crown, counsel for the defence, the defendant, and the court reporter are to be present in open court at the sentencing hearing.
35. Notwithstanding paragraph 34, sentencing of defendants in custody may take place by remote hearing where it is convenient and just to do so.
36. Any Social Enquiry Report (SER) requested by the court will be in the short form unless the judge specifically requests the long form of the report.
37. Any SER requested is to be sent by the probation officer by way of electronic mail to the following email addresses for the criminal Registry or the Gun Court Registry:

criminalregistry@supremecourt.gov.jm
guncourtregistry@supremecourt.gov.jm
38. The SER should be sent by the probation officer at least five (5) days before the sentencing date.
39. On receipt of the SER, the registry is to send the report to the recipients as well

40. Unless the recipients indicate that the probation officer is needed to answer questions in court, then the SER will form part of the record of the trial.
41. Where probation officers are needed in court, their appearance should be facilitated from a remote location unless the Judge orders otherwise.
42. Counsel for the Crown and the defence may appear remotely.
43. Where a defendant has been convicted of any criminal offence at any court to which this Practice Direction applies and has not yet been sentenced, and the judge is no longer presiding at the court where the defendant was convicted, the judge may proceed to pass sentence by live video link, provided the following conditions are met:
- a the judge is present in court either in-person or remotely where the sentencing hearing is to take place;
 - b the defendant is present in the court, either in-person or remotely;
 - c the court reporter is present in court, either in-person or remotely;
 - d the live video link facilitates two-way communication between the judge, counsel for the defendant, counsel for the Crown and any other person whose participation is necessary;
 - e in the event that the defendant, the judge, counsel for the Crown or defence or court reporter or any of them are unable to be physically present in a courtroom, the sentencing hearing can proceed provided all parties can be connected to a specified courtroom remotely.
44. In respect of paragraph 43, it is the duty of the Judge and the Registrar to ensure that all relevant documents needed to be signed by the judge are signed within seventy-two (72) hours of sentencing the defendant.

DATED THIS 15th DAY OF NOVEMBER 2021



BRYAN SYKES O.J. CD