

PRE-TRIAL COORDINATION PROTOCOL

This Protocol is subject to change. It is expected that as the Project proceeds, changes will be made and the Protocol will be amended. Please refer to our website at www.manitobacourts.mb.ca for the most updated version of the Protocol.

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PRE-TRIAL COORDINATION PROTOCOL

PREAMBLE

Section 482.1(1)(b) of the *Criminal Code* gives the Court the power to delegate certain administrative tasks to Court personnel. The new front-end system will enable Pre-Trial Coordinators (PTC) to conduct the pre-plea processing of an accused prior to his/her arraignment before a Judge. This process will also allow the Crown and the Defence to identify, discuss and hopefully resolve administrative issues in a fashion that does not involve the attendance of a Judge.

Well-managed and effective pre-trial coordination will ensure that when a matter is put before a Judge, only the following meaningful events will occur:

- 1) Arraignments;
- 2) Motions;
- 3) Bail Applications/Variations;
- 4) Hearings/Trials;
- 5) Sentencing.
- 6) Warrants

PURPOSE OF PROTOCOL

This Protocol sets the pre-plea process parameters within which an Information that is laid with respect to an incident or incidents that occurred in an area that is serviced by the Winnipeg Provincial Court and;

- a) that deals with an Accused who is being held in custody; or
- b) that relates to an Accused who was released after arrest and who is charged with a Domestic Violence offence;

All functions that are administrative in nature will be handled by senior Court staff called Pre-Trial Coordinators (PTC) who are limited jurisdiction Justices of the Peace. This Protocol is the document from which the PTCs obtain their authority and direction. They will have no discretion to deviate from this Protocol.

PRE-TRIAL COORDINATORS

Non-discretionary case management by the PTC is essential for a successful pretrial processing. The PTCs are mandated to deal with the following pre-plea administrative tasks to ensure that:

- 1) an accused has been informed of his/her right to counsel;
- 2) defence has full disclosure;
- 3) bail variation issues have been addressed;
- 4) the Crown has had a chance to consider its position;
- 5) meaningful discussions between counsel have occurred;
- 6) counselling issues have been addressed;
- 7) a pre-plea comprehension inquiry has been conducted;
- 8) the Certificate of Trial Readiness has been completed.

PTCs are able to adjourn matters and when provided with Crown Stay of Proceedings Forms, attached Appendix 'A', enter Stays of Proceedings. They do not have the authority to issue or cancel warrants or allow counsel to withdraw.

INFORMATIONAL BROCHURE

When an accused is charged with a Domestic Violence criminal offence and is subsequently released by the police on a Promise to Appear, he/she will be given an Informational Brochure, attached Appendix "B". This brochure is written in plain language and indicates that he/she:

- is charged with a criminal offence;
- has promised to appear in Courtroom 308 at 1:00 p.m. on a specified date;
- must attend on that date;
- must live by the rules listed in the Promise to Appear;
- has the right to have a lawyer help them;
- should contact a lawyer BEFORE court if they want one;
- may be able to get Legal Aid to pay for a lawyer;

- can call the listed phone numbers for assistance;
- can represent themselves if they don't get a lawyer;
- can contact Prosecutions to find out what police say;
- can't change any conditions of release on their own.

PRE-TRIAL COORDINATOR'S LIST

Between the time a charge is laid and a matter is ready to proceed to plea before a Judge, the matter will appear on a list. The PTCs, who are bound by certain administrative timelines, will oversee these lists.

a) All Adult Bail applications and expedited dispositions: This list will be held from Monday to Friday starting at 9:30 in Courtroom 301 at 408 York Avenue in Winnipeg for bail applications. Expedited dispositions can also be heard in the bail courts, time permitting, where both crown and defence are ready to proceed.

b) All other In-custody matters:

i) For Domestic Violence matters: This list will be held every Tuesday starting at 9:15 a.m. in Courtroom 308 at 408 York Avenue in Winnipeg for matters where bail has been denied or where the Accused confirms that no bail application will be made.

ii) For all other Adult matters: This list will be held every Thursday and Friday starting at 9:15 a.m. in Courtroom 308 at 408 York Avenue in Winnipeg for matters where bail has been denied or where the Accused confirms that no bail application will be made.

c) Out-of-custody Domestic Violence matters

This list will be held on Tuesday, Wednesday and Thursday at 1:00 p.m. in Courtroom 308 at 408 York Avenue in Winnipeg. Judges, Magistrates or Police Officers, who release an Accused charged with a Domestic Violence offence(s), will direct that an Accused appear in Courtroom 308 on the following days, six weeks after arrest:

- Winnipeg Police Service, District 1 charges on Tuesdays

- Winnipeg Police Service, District 2 and 3 charges and other police/enforcement agencies on Wednesdays
- Winnipeg Police Service, District 4, 5 and 6 charges on Thursdays

The PTC lists will not be electronically monitored, however the PTCs will keep a Pre-Trial Coordinator log.

ADMINISTRATIVE TIMELINES

The Court, after consultation with the Crown's office, Defence counsel, Legal Aid and the Winnipeg Police Service, has developed these timelines. Appendix "C" is the 'Pre-Plea Administrative Timeline Schedule'.

a) In-custody matters

If someone is held in-custody and bail is subsequently denied or the Accused has indicated that no bail application will be made, his/her matter will be remanded to a PTC custody list until the matter is either disposed of by way of guilty plea or set down for hearing. This PTC will monitor the case and if a plea has not been entered after a twelve-week period following arrest, the PTC will remand or transfer the matter to Courtroom 401.

Subject to a Crown request to have a matter brought before a Judge in Courtroom 401, the PTC will be allowed to remand a matter to the next PTC custody list remands in the following circumstances:

- 1) If counsel does not appear on a matter that is on the PTC list, the PTC will advise each Accused that their lawyer did not appear to speak to their matter and that it will be put over to next PTC list; and
- 2) If an Accused is without counsel, the PTC will advise the Accused of their right to counsel and of the availability of Legal Aid Duty Counsel.

If counsel again does not appear on a matter, the PTC will cause the matter to be brought before the 401 Court Judge.

If after speaking to the accused, the PTC feels that the matter should appear before the 401 Court Judge, they can remand the matter directly to the next 401 Court.

b) Release from custody

If a person is in custody more than six weeks, but less than twelve weeks and is released during that period of time, they will go to week six in the out of custody timelines if it is a Domestic Violence matter. All other Adult matters will proceed in the usual Out-of-custody dockets.

c) Out of custody matters

With respect to an accused who is out-of-custody on Domestic Violence charges, these timelines provide for a maximum of 3 to 5 pre-plea remands before a PTC over a 12 to 14 week time period after arrest. The police are expected to provide full particulars to the Crown within 4 weeks of arrest. Full particulars include court assistance reports, police narrative reports, officer's notes, written and video statements and the laying of the Information. This does not include external reports, such as laboratory reports, medical reports, fire commissioner reports, etc. In the following 4 weeks (so up to 8 weeks after release), Prosecutions is expected to assign a Crown to each matter, the assigned crown is expected to review particulars, make a referral to Women's Advocacy Program if appropriate, and be ready to engage in plea discussions with Defence Counsel. At the first appearance, which is set at 6 weeks after arrest, the Crown will provide to Defence Counsel, the particulars and the name of the Crown assigned to the file. The timeline for the next 6 to 8 weeks depends on when and if the accused retains counsel.

1) If an accused is represented by counsel on first appearance -
(maximum number of remands is fixed at 3)

At the first appearance, the PTC can allow a 4 week remand for final discussions.

During this 4 week remand, it is expected that;

- the Defence will review particulars;
- the Defence will contact and have discussions with the Crown;

Any of these actions may take place before the first appearance but are not required to take place before the first appearance.

At the second appearance, the PTC will grant a final two week remand if required.

2) If an accused is not represented by counsel - (maximum number of remands is fixed at 4, 5 if Legal Aid is denied.)

When an accused has no counsel and has yet to apply to Legal Aid, at the first appearance, it is expected that;

- the PTC will advise the accused of his/her right to counsel;
- the accused can meet with a Legal Aid representative and if applying for Legal Aid, the PTC will allow a Legal Aid processing remand;
- if the accused wants private counsel, the PTC will allow a remand for a private counsel consultation;
- should the accused insist on no counsel, the PTC will after reviewing the Trial Readiness and Pre-Comprehension form, remand the matter to the Plea Court.

These timelines form part of this protocol and the PTCs have no authority to deviate from them. Failure to comply with the timelines as directed by the PTC, will result in the matter being referred to the Domestic Violence Plea Court Judge.

PRE-TRIAL COORDINATOR LOG

The PTC will complete a 'Pre-Trial Coordinator's Log' following each remand. This log will be in the form attached Appendix "D". The purpose of the log is to note what occurred and to indicate what is expected to occur before the next remand date. It is also available for review by the Judge. The log will be available for public review, in the same way that a record of proceedings is available.

The following information will be recorded and confirmed on the PTC Log:

- 1) the counsel of record;
- 2) that particulars have been given to Defence;
- 3) that disclosure is complete;

- 4) that meaningful discussions have occurred between counsel;
- 5) that the matter has been allowed to proceed to counselling;
- 6) that a Women's Advocacy Report has been received on Domestic Violence charges;
- 7) that a Pre-Plea comprehension inquiry has occurred.

CERTIFICATE OF TRIAL READINESS

When a matter is ready to proceed for a plea of not guilty, Defence counsel will sign a Certificate of Trial Readiness. This Certificate, which will be in the form attached Appendix "E", will certify that the pre-plea processing is completed and that it is ready for Arraignment before a Judge.

CONSENT REMANDS

When both the Crown and Defence agree to a remand, the Crown will advise the PTC. This will eliminate the need for any appearance by counsel on that date.

Consent Remands will not be allowed in the following two situations:

- 1) when there are personal appearance requirements for an accused; or
- 2) when the remand date does not comply with the timeline requirements.

NON APPEARANCE BY AN ACCUSED

If an accused, who has personal appearance requirements or does not yet have counsel, does not appear on the PTCs list, his/her non-appearance will be noted and the matter will be remanded for two weeks on the PTCs list. If the accused still does not appear two weeks later, the matter will be referred to the Plea Court Judge the same day for the issuance of a warrant.

If the accused does appear two weeks later, the matter will proceed as usual. The timeline requirements will not be suspended during this two-week period.

RE-ARREST ON A BREACH

An accused who is arrested on a breach charge and subsequently released to appear on the PTC list without new substantive charges, will be

considered by the PTC to be reinserted, with respect to the administrative timelines, at the same point the Accused was immediately prior to his/her arrest. If the Accused had reached the end of the timeline at the time of arrest, he/she will be allowed one last remand before having to enter a plea.

COUNSELLING PROGRAMS

If the Crown agrees to refer a matter to a counselling program, it will be noted in the PTC's Log and the following counselling program timelines will apply:

- 1) an initial two-month remand to confirm enrollment in the program;
- 2) a second remand for three months to complete the program;
- 3) a limited circumstance remand of one month in the event that the program takes longer to complete than anticipated.

After the last remand, if the program is successfully completed, the Crown will provide the PTC with a Stay of Proceedings Request Form. If the program is completed earlier than expected and the accused provides confirmation of it to the Crown, then a Stay of Proceedings can be entered by the Crown filing the Stay of Proceedings Request Form with the PTC on or before the next remand date.

A Remand for Counselling Form, attached Appendix "F", will be used by the PTCs to track the above mentioned counselling timelines.

GUILTY PLEAS

In Custody

Defence counsel will advise the PTC when a matter is ready for sentencing and confirm that the accused is required in person or advise if video link can be used. Should defence counsel opt to proceed via video link, the sentencing Judge reserves the right to have the accused brought before him/her in person for the sentencing hearing.

Out of Custody – Domestic Violence Matters

If an unrepresented accused wants to plead guilty, the PTC will ensure that he/she is aware of all the consequences of such an action. The Pre-Plea Comprehension Inquiry Form, attached Appendix "G", will be completed and signed by the accused, and then the matter will be remanded two weeks later to the Domestic Violence Plea Court. If the accused wants to plead

guilty immediately, the same process will be followed and if the Crown is ready to proceed, the matter will be transferred to the next available Domestic Violence Plea Court for a guilty plea. If the Crown is not ready to proceed at the next available Domestic Violence Plea court, the PTC will remand the matter up to a maximum of 2 weeks later to a Domestic Violence Plea Court.

If an accused is represented by counsel the above mentioned procedure applies except for the plea comprehension inquiry.

SENIORITY OF COUNSEL

The PTC Custody Flowchart (Appendix "I") requires in-custody Accused' names to be placed by the PTC on a list so that an Accused can be brought via video link-up before a judge. This list has to be conveyed to the appropriate officials at the Winnipeg Remand Centre or Headingley, as the case may be, 15 minutes before the commencement of court in order to be able to present the Accused via the video link. The PTC will give priority to Senior Counsel when the list is created. Any subsequent matters that are referred to court that day after the initial call, will be done on a first come, first serve basis.

FLOWCHARTS

Attached are the following pre-plea processing flowcharts that will be used by the PTCs to process matters;

- 1) Appendix "H": the PTC Flowchart - Custody;
- 2) Appendix "I": the PTC Flowchart - Out-of-Custody;
- 3) Appendix "J": the PTC Flowchart - Counselling.

Appendix "A" - CROWN STAY OF PROCEEDING FORM

CROWN REQUEST - STAY OF PROCEEDINGS

TO BE
COMPLETED
BY CROWN

DATE: _____

NAME OF ACCUSED: _____

DATE OF BIRTH: _____

POLICE REPORT #: _____

CHARGES: _____

COURT POCKET #: _____

STATUS OF CASE:

ACCUSED IN CUSTODY: YES NO

CURRENT REMAND DATE: _____ Courtroom _____

408 YORK AVENUE OR

I HEREBY DIRECT THAT A STAY OF PROCEEDINGS BE ENTERED FORTHWITH, ON THE RECORD OF PROCEEDINGS OF THE ABOVE NOTED CHARGES.

CROWN: _____

SIGNATURE: _____

CROWN SUPPORT CONTACT _____

PHONE NUMBER _____

Manitoba Justice

READ THIS

- ◆ You are charged with a criminal offence(s). You promise to appear in court. You go to court on _____. Court is at 408 York Avenue, Courtroom 119 at 1:00 p.m.
- ◆ You must go to Court on the date and at the time marked on the papers the police gave you.
- ◆ You must follow the rules on the papers the police gave you. These rules are called conditions.
- ◆ **You have the right to have a lawyer help you in court. If you want a lawyer, please speak to one *BEFORE* you come to court.**
 - Legal Aid might pay for your lawyer. To find out: phone the Legal Aid Office at 985-8570, or go to the Legal Aid Office at 416-294 Portage Avenue on Tuesday, Wednesday or Thursday between 1:30 pm and 6:00 pm to apply. You have to pay \$25 to apply unless you are on social assistance.
 - If you can't get Legal Aid, you can find a lawyer by:
 - phoning Lawyer Referral at 943-2305,
 - asking people you know to suggest a lawyer, or
 - looking in the yellow pages.
 - If you can't get Legal Aid and can't hire a lawyer, you can represent yourself in court.
 - If you need to talk to a Legal Aid lawyer when you come to court, come at 12 noon instead of 1 pm.
- ◆ Your lawyer will contact the prosecutor to find out what the police say about your case. If you are not going to get a lawyer, you should phone Prosecutions at 945-0599.
- ◆ You can't change any conditions of release on your own. If you want to change any conditions, talk to your lawyer or if you do not have a lawyer, phone Prosecutions at 945-0599.

Appendix "C" - PRE-PLEA ADMINISTRATIVE TIMELINE SCHEDULE

WEEK	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Reviewed June 5, 2003																
In Custody Bail Denied Or No Application Made	Disclosure, Crown Review and Discussion					1 st App	Week 1					Legend: Send to Judge = * plea court * disposition court * resolution court * remand for counseling Limited Circumstance Remand = If no contact from victim or if no contact from client				
Out of Custody Released by Police & has no counsel A	Police (Provide Full Disclosure to Crown)					Crown (Review Disclosure, Victim Contact, WAP)										
B	Weeks 1 - 8 as set out in "A"					1 st App	Week 6	Crown Disclosure to Defence		2 nd App	Week 10	3 rd App	Week 12			
						If With Counsel		CR & DEF (Exchange Positions)		Limited Circumstance Remand		Send to Judge				
C	Weeks 1 - 8 as set out in "A"					1 st App	Week 6	2 nd App	Week 8	3 rd App	Week 10	4 th App	Week 12			
						If No Counsel Apply Legal Aid or Get Private Counsel		If With Counsel		Limited Circumstance Remand		Send to Judge				
D	Weeks 1 - 8 as set out in "A"								2 nd App	Week 8	3 rd App	Week 10	4 th App	Week 12	5 th App	Wk 14
									If Legal Aid Denied		If With Counsel CR & DEF (exchange positions)		Limited Circumstance Remand		Send to Judge	
E	Weeks 1 - 8 as set out in "A"											3 rd App	Week 10	PLEA COURT		
												If Still No Counsel				
Outcustody after bail & now has counsel	Police (Provide Full Disclosure to Crown)				Crown (Review Disclosure, Victim Contact, WAP)				Crown Disclosure to Def		1 st App	Week 10	2 nd App	Week 12		
									CR & DEF (exchange positions)		Limited Circumstance Remand		Send to Judge			

PRE-TRIAL CO-ORDINATOR LOG

Name Of Accused: _____ Court Information # _____ 1st Appearance Date: _____ MUST GO TO JUDGE BY: _____ (9 weeks from 1 st appearance)		
<input type="checkbox"/> PERSONAL APPEARANCE - CONDITION OF RELEASE		
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ 1st Appearance: CROWN ASSIGNED: _____ _____ _____ _____ PTC INITIALS: _____	Reason for Remand: <input type="checkbox"/> Counsel <input type="checkbox"/> Disclosure <input type="checkbox"/> Discussions <input type="checkbox"/> For Plea <input type="checkbox"/> For 2 months to confirm enrolment in Counselling (see over)
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ 2nd Appearance: _____ _____ _____ _____ PTC INITIALS: _____	Reason for Remand: <input type="checkbox"/> Counsel <input type="checkbox"/> Disclosure <input type="checkbox"/> Discussions <input type="checkbox"/> Limited Circumstance <input type="checkbox"/> For Plea <input type="checkbox"/> For 2 months to confirm enrolment in Counselling (see over)
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ 3rd Appearance: _____ _____ _____ _____ PTC INITIALS: _____	Reason for Remand: <input type="checkbox"/> Plea Crt. for Counsel <input type="checkbox"/> Disclosure <input type="checkbox"/> Discussions <input type="checkbox"/> Limited Circumstance <input type="checkbox"/> For Plea <input type="checkbox"/> For 2 months to confirm enrolment in Counselling (see over)
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ 4th Appearance: _____ _____ _____ _____ PTC INITIALS: _____	Reason for Remand: <input type="checkbox"/> Plea Crt. to complete disclosure <input type="checkbox"/> Discussions <input type="checkbox"/> Limited Circumstance <input type="checkbox"/> For Plea <input type="checkbox"/> For 2 months to confirm enrolment in Counselling (see over)
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ 5th Appearance: _____ _____ _____ _____ PTC INITIALS: _____	Reason for Remand: <input type="checkbox"/> To Plea Crt to Complete Discussions <input type="checkbox"/> For Plea <input type="checkbox"/> For 2 months to confirm enrolment in Counselling (see over)
<input type="checkbox"/> Counsel on Record Date: _____ Name _____ OR <input type="checkbox"/> Unrepresented <input type="checkbox"/> Ptx. given to Defence Date: _____ <input type="checkbox"/> Confirm Disclosure Complete Date: _____ <input type="checkbox"/> Confirm WAP Report Received Date: _____ <input type="checkbox"/> Confirm Defence received Crown Position Date: _____ <input type="checkbox"/> Crown/Defence Discussions Complete Date: _____ <input type="checkbox"/> Cert. Of Trial Readiness Complete Date: _____		<input type="checkbox"/> Pre-Plea Comprehension Inquiry Form signed by unrepresented accused prior to entering guilty plea

PROVINCIAL COURT
CERTIFICATE OF TRIAL READINESS

ACCUSED	CROWN	ACCUSED PRESENT TO SET DATE	LAWYER ACTING	LAWYER APPEARING TO SET DATE
CHARGES				
PROCEDURAL DIFFICULTY WITH INFORMATION(S), IF SO SPECIFY				
ELECTION				
PRE-TRIAL MOTIONS (SPECIFY)				
ISSUES ADMITTED π JURISDICTION π CONTINUITY OF EXHIBITS π IDENTITY π DOCUMENTS π MEDICAL EVIDENCE π OTHER (SPECIFY)				
ISSUES IN DISPUTE				
# OF CROWN WITNESSES (CHILD WITNESSES ?)	CIVILIAN			TOTAL
	POLICE			
# OF DEFENCE WITNESSES				
ESTIMATE OF TIME	CROWN			
	DEFENCE			
CHARTER ISSUES				
STATEMENT FROM ACCUSED VOIR DIRE NEEDED?				
DEFENCE EVIDENCE ON VOIR DIRE?				
OTHER MATTERS				
<p>CERTIFICATION OF COUNSEL: I HEREBY CERTIFY THAT: v That I am counsel for the accused v I am not aware of any outstanding disclosure issues v The Crown has confirmed that the prosecution is proceeding v Discussions have occurred with the Crown v This matter is ready to proceed to trial/preliminary enquiry</p> <p>Signature _____ Name (please print) _____ Date _____</p>				
JUDGE/PTC SETTING DATE				
DATE MATTER SET				
TRIAL/PRELIMINARY DATE				COURTROOM

<input type="checkbox"/> PERSONAL APPEARANCE - CONDITION OF RELEASE		
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ _____ _____ _____ _____ PTC INITIALS:	Reason for Remand: <input type="checkbox"/> To complete counselling program (maximum 3 months) <input type="checkbox"/> Plea Crt.
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ _____ _____ _____ _____ PTC INITIALS:	Reason for Remand: <input type="checkbox"/> Limited Circumstance (maximum 1 month) <input type="checkbox"/> Plea Crt.
<input type="checkbox"/> Consent Remand Form Filed	DATE _____ _____ _____ _____ _____ PTC INITIALS:	Reason for Remand: <input type="checkbox"/> Plea Crt.

PRE-PLEA COMPREHENSION INQUIRY FORM

I, _____, hereby acknowledge that:

- 1. I understand that I have the right to legal counsel and wish to waive that right and represent myself in court.**
- 2. I intend to enter a plea of Guilty.**
- 3. No one is forcing me to plead guilty.**
- 4. I agree that I did the offence(s).**
- 5. By pleading guilty, I know that the Crown will not have to prove the case against me.**
- 6. I understand I will now be sentenced by a Judge and the Judge does not have to follow any agreement made between the Crown Prosecutor and myself.**

Date: _____

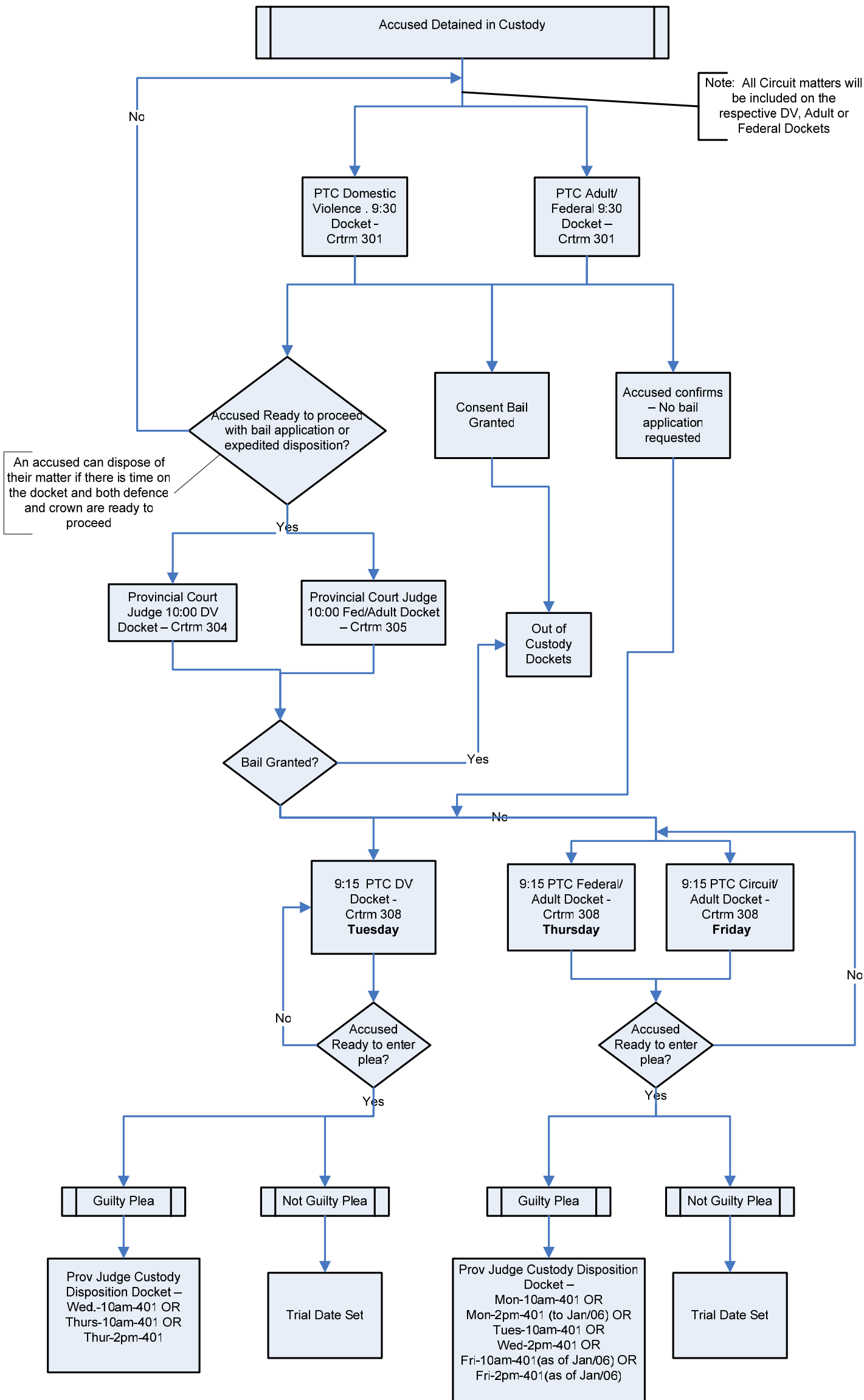
Signature: _____

Witness: _____

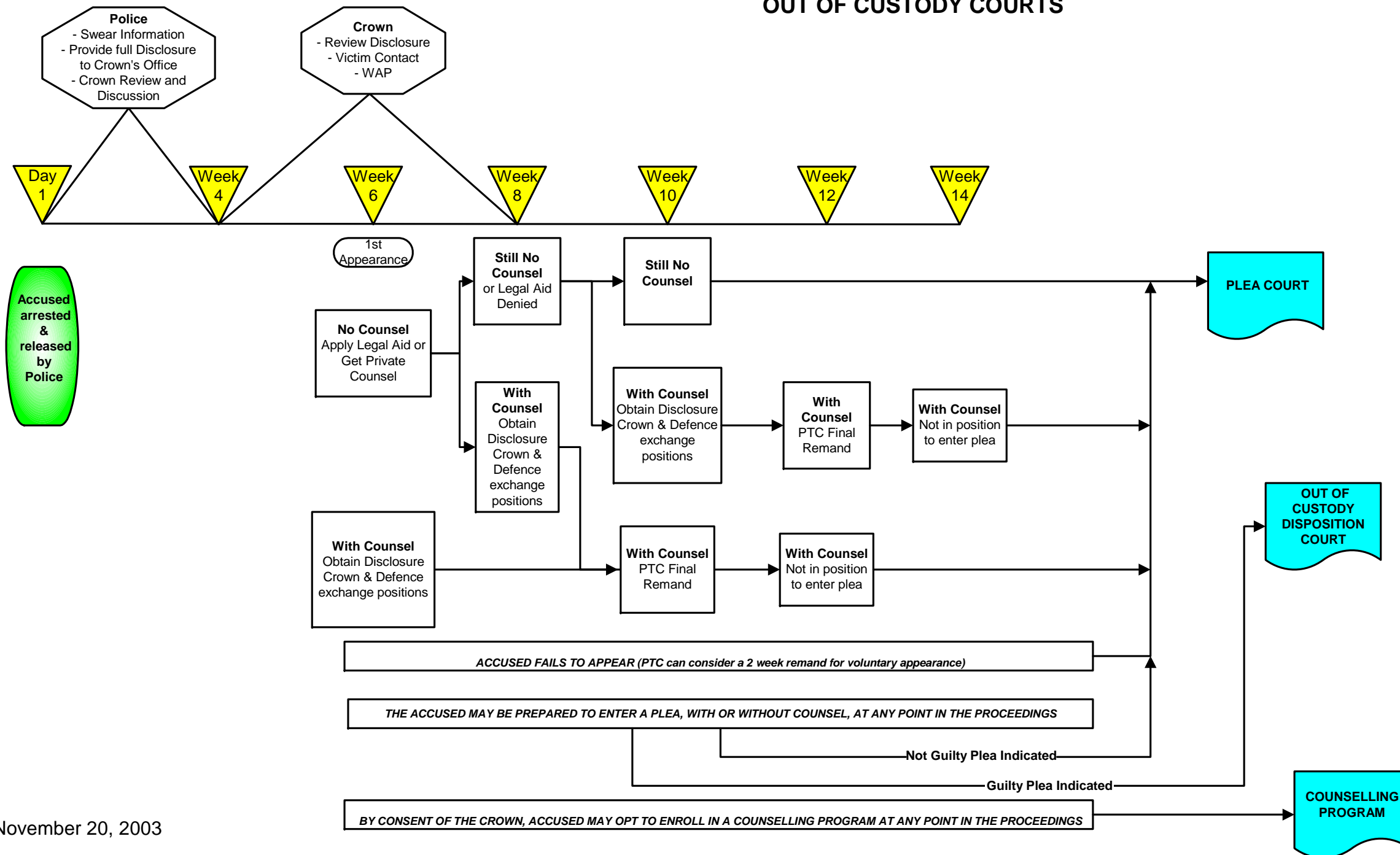
Name of Witness: _____

(please print)

Appendix "H" - PTC Flowchart - Custody



DOMESTIC VIOLENCE FRONT END OUT OF CUSTODY COURTS



DOMESTIC VIOLENCE FRONT END COUNSELLING PROGRAM

