

**SPEEDY TRIAL PLAN
FOR
THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA
ARTICLE I**

101. ADOPTION OF PLAN.

In compliance with the Speedy Trial Act of 1974, the Speedy Trial Act Amendments Act of 1979, and specifically 18 U.S.C. §§ 3165 and 3166, the judges of the United States District Court for the Middle District of Pennsylvania hereby adopt this amended Plan for the disposition of criminal cases in this district. This revision to the District Plan was approved by the court on 29 of April, 2005, and shall become effective upon the approval of the Judicial Council of the Third Circuit and the Chief Judge of this District, in accordance with 18 U.S.C. § 3165(d).

102. MEMBERS OF THE SPEEDY TRIAL ACT WORKING GROUP OF THIS DISTRICT.

Honorable Christopher C. Conner, U.S. District Judge

Honorable J. Andrew Smyser, U.S. Magistrate Judge

Martin Carlson, Chief Assistant U.S. Attorney

James F. Wade, Federal Public Defender

Chris Fisanick, Assistant U.S. Attorney

Mary E. D'Andrea, Clerk

Cathy Dolinish, Chief Deputy Clerk

Gary L. Hollinger, Chief Deputy Clerk

Kevin Calpin, Operations Manager

103. LOCATION OF RECORDS.

In compliance with 18 U.S.C. § 3165(f), the amended District Plan shall become a public document upon approval of the Board of Judges and upon final adoption of the amended Plan. Copies will be available as follows:

(a) For Inspection: At the Clerk's Offices at Scranton, Harrisburg and Williamsport and also available on the court's website at www.pamd.uscourts.gov.

(b) For Purchasing: At Clerk's Offices (See (a)(1) above) at the charge currently in effect for copies of documents.

ARTICLE II

STATEMENT OF TIME LIMITS

AND PROCEDURES FOR IMPLEMENTING THEM

201. Pursuant to the requirements of the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (P.L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036 and 5037), the judges of the United States District Court for the Middle District of Pennsylvania have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.¹

202. APPLICABILITY.

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses except for petty offenses as defined in 18 U.S.C § 19 and Rule 58(a) of the Federal Rules of Criminal Procedure. Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. [18 U.S.C. §§ 5031-5042]

(b) Time Computations. For the purpose of sanctions as provided in § 3162 of the Act, a time limit in this Plan which ends on a Saturday, a Sunday or a legal holiday will be computed as provided for in Rule 45(a) of the Federal Rules of Criminal Procedure.

203. PRIORITIES IN SCHEDULING CRIMINAL CASES.

(a) Preference Generally. Preference shall be given to criminal proceedings as far as practicable

¹ If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. see United States v. Mauro, 436 U.S. 340, 356-57 n. 24 (1978).

as required by Rule 50 of the Federal Rules of Criminal Procedure.

(b) Preference as Between Criminal Defendants. The trial of defendants in custody solely awaiting trial on the federal charge contained in the pertinent indictment, information, or complaint should be given preference over other criminal cases. [18 U.S.C. § 3164(a)]

204. TIME WITHIN WHICH AN INDICTMENT OR INFORMATION MUST BE FILED.

(a) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this District, any indictment or information subsequently filed in connection with such charge shall be filed within thirty (30) days of arrest or service. [18 U.S.C. § 3161(b)]

(b) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this District, and no grand jury in the district has been in session during the thirty (30) day period prescribed in subsection (a), such period shall be extended an additional thirty (30) days. [18 U.S.C. § 3161(b)]

(c) Measurement of Time Periods. If a person has not been arrested or served with a summons, an arrest will be deemed to have been made with respect to a federal charge in this District at such time as the person (i) is held in custody solely for the purpose of responding to that charge; (ii) is delivered to the custody of a federal official in connection with that charge; or (iii) appears before a judicial officer in connection with the charge.

(d) Related Procedures.

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

205. TIME WITHIN WHICH TRIAL MUST COMMENCE.

(a) Time Limits. In accordance with 18 U.S.C. § 3161(c)(1), the trial of a defendant shall

commence not later than seventy (70) days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed and made public;

(2) The date of the defendant's first appearance before a judicial officer of this District.

(b) Retrial; Trial After Reinstatement of an Information or Indictment. The retrial of a defendant shall commence within seventy (70) days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within seventy (70) days impractical. The extended period shall not exceed one hundred eighty (180) days. [18 U.S.C. § 3161(d)(2) and (e)]

(c) Withdrawal of Plea. If a defendant enters a plea of guilty or *nolo contendere* to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. [18 U.S.C. § 3161(i)]

(d) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment or information is filed that charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. [18 U.S.C. § 3161(d)(1)]

(2) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information.

(3) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during

which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge. If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information.

(4) In the event that the complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information, unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(e) Measurement of Time Periods. For the purpose of this section:

(1) In the event of a transfer to this District under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this District when the papers in the proceeding or certified copies thereof are received by the Clerk.

(2) A trial in a jury case shall be deemed to commence at the beginning of *voir dire*.

(3) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(f) Related Procedures.

(1) At the time of the defendant's earliest appearance before a judicial officer of this District, the judicial officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act, Rule 44 of the Federal Rules of Criminal Procedure and the court's Criminal Justice Act Plan.

(2) The magistrate judge or clerk shall obtain from the defendant, and place on the record, a good address and telephone number where the defendant can be reached or served by the court, and shall instruct the defendant to notify the court immediately of any change of address or phone number.

(3) In a case where it is not certain that the defendant already has retained or will retain private counsel, the Clerk and/or Federal Public Defender will arrange for the defendant to receive the financial affidavit form for appointment of counsel impressing the importance of prompt filing. The court will set a time limit within which:

a. The defendant will obtain private counsel or proceed *pro se*, if the defendant does not qualify for court appointed counsel.

b. If the defendant qualifies for court appointed counsel, such counsel will be appointed.

(4) At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short term calendar.

(5) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting or will be reached as expeditiously as possible within the short term calendar list. A conflict in schedules of Assistant United States Attorneys or defense counsel will be grounds for a continuance or delayed setting only if approved by the court, and called to the court's attention at the earliest practicable time. The court shall state the reason(s) for the continuance in its order granting any continuance(s). The United States Attorney will familiarize himself or herself with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be ready for trial.

(6) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

(7) The Chief Judge may reassign any or all of the criminal cases of one judge to other judges whenever the Chief Judge determines that because of sickness, disability, or extensive time in trial likely to be required in a criminal or civil case already started, or for other good reason, reassignment is necessary to meet the time limit for commencing trial in such cases.

206. DEFENDANTS IN CUSTODY.

(a) Time Limits. In accordance with 18 U.S.C. § 3164(b), notwithstanding any longer time periods that may be permitted under sections 204 and 205 of this Plan, the trial of a defendant

held in custody solely for the purpose of trial on a federal charge shall commence within ninety (90) days following the beginning of continuous custody on the federal charges pending in the Middle District.

(b) Measurement of Time Periods. For the purposes of this section:

(1) A defendant is deemed to be in detention awaiting trial when arrested on a federal charge or otherwise held for the purpose of responding to a federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(2) If a Middle District case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(3) A trial shall be deemed to commence as provided in section 205(e)(2) and (3).

207. EXCLUSION OF TIME FROM COMPUTATION.

(a) Applicability. In computing any time limit under sections 204, 205, or 206, periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section 208. It shall be the responsibility of any party filing a motion that seeks any form of relief that results in periods of delay that are subject to exclusion under 18 U.S.C. § 3161(h), to identify and describe fully those periods of excludable delay for the court in the party's motion, enabling the court to make a meaningful judgment regarding the Speedy Trial Act implications of the motion, and provide the court with a proposed form of order that specifically addresses any applicable Speedy Trial Act exclusions.

(b) Records of Excludable Time. The Clerk shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney.

(c) Pre-Indictment Procedures.

(1) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section 204, the United States Attorney may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. § 3161(h)(8), the United States Attorney shall file a written motion with the court requesting such a continuance.

(2) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered *ex parte* and *in camera*.

208. MINIMUM PERIOD FOR DEFENSE PREPARATION.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than thirty (30) days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed *pro se*. In circumstances in which the seventy-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section 205(d) the thirty-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new thirty-day minimum period will not begin to run. [18 U.S.C. § 3161(c)(2)]

209. TIME WITHIN WHICH DEFENDANT SHOULD BE SENTENCED.

(a) Time limits. Sentencing proceedings shall be scheduled in accordance with this court's Standing Order #03-5: "Policy for Guideline Sentencing," as may be amended from time to time.

(b) Related Procedures. Presentence investigations and reports shall be prepared in accordance with Rule 32 of the Federal Rules of Criminal Procedure and this court's Standing Order #03-5: "Policy for Guideline Sentencing," as may be amended from time to time.

210. JUVENILE PROCEEDINGS.

Proceedings in juvenile matters shall be scheduled in accordance with 18 U.S.C. §§ 5036 and 5037.

211. SANCTIONS.

(a) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges or to release from pretrial custody. Nothing in this Plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. §§ 3162 and 3164.¹

(b) Discipline of Attorneys. In a case in which counsel:

(1) Knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial,

(2) Files a motion solely for the purpose of delay that counsel knows is frivolous and without merit,

(3) Makes a statement for the purpose of obtaining a continuance that counsel knows to be false and that is material to the granting of the continuance, or

(4) Otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161,

the court may punish such counsel as provided in 18 U.S.C. § 3162(b) and (c).

212. PERSONS SERVING TERMS OF IMPRISONMENT.

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, the United States Attorney shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. § 3161(j).

¹ Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C. Appendix.

ARTICLE III

DISTRICT EXPERIENCE UNDER THE ACT.

301. EFFECT OF THE PREVAILING TIME LIMITS ON CRIMINAL JUSTICE ADMINISTRATION.

- (a) The prevailing time limits make it imperative that there be prompt and continuous communication among the persons, parties, and agencies in the criminal justice system. This will need to be stressed in the training of staff for all positions.
- (b) Prosecutors and defense attorneys will have to avoid case overload. They will have to concentrate on a lesser individual case load to prepare and to respond properly to all case activities and events within the time limits.
- (c) Attention to detail has become an important aspect in avoiding delay. Record keeping needs to be thorough and accurate. Record keepers must be well trained, supervised, and continuously updated. These aspects, as well as communication in (a), supra, indicates greater attention in the future to individual training, to supervision, and to selection of more qualified personnel.
- (d) There are no indications to date that the time limits have had an effect on transfer of cases.
- (e) Current records and statistics do not show that the time limits have had any effect on appeals. As sanctions might be imposed, there is a possibility for some appeals.
- (f) General costs do not appear to be affected by Speedy Trial Act time limits. However, the time limits and additional procedural and record keeping requirements do have a greater impact, presently unmeasured, on personal time. Therefore, some cost is involved but can not be accurately determined at this time.

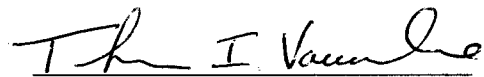
ARTICLE IV

CHANGES IN PROCEDURES AND INNOVATIONS THAT HAVE BEEN OR WILL BE ADOPTED BY THE COURT TO EXPEDITE THE DISPOSITION OF CRIMINAL CASES IN ACCORDANCE WITH THE SPEEDY TRIAL ACT.

401. CHANGES ADOPTED BY THE COURT.

The court intends to adopt Local Rules of Criminal Procedure addressing certain speedy trial issues. The court will consider possible modifications and additions to those rules on an ongoing basis. The court will also continue to consider modifications, additions and deletions to the Speedy Trial Plan, as deemed necessary by the Chief Judge.

This revision to the District Plan was approved by the court on 29 of April, 2005, and shall become effective upon the approval of the reviewing panel in accordance with 18 U.S.C. § 3165(d).



Chief Judge Thomas I. Vanaskie

8/30/06

(Date Approved)



For the Judicial Council of the Third Circuit

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