

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Re: Speedy Trial Act Plan

Administrative Order

No. 10-AO- 003

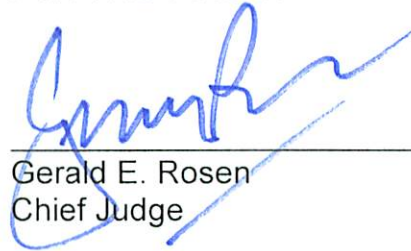
ADMINISTRATIVE ORDER

On November 2, 2009, the Judges of the United States District Court for the Eastern District of Michigan approved the attached Speedy Trial Act Plan and forwarded it to the Judicial Council of the Sixth Circuit for final approval. The Plan was approved by the Judicial Council and Chief Judge Alice M. Batchelder signed the Certificate of Approval on December 1, 2009.

NOW THEREFORE IT IS ORDERED THAT the attached Speedy Trial Act Plan is adopted for the Eastern District of Michigan until further order of the Court, and supersedes all previous versions of the Plan.

Pursuant to 18 U.S.C. § 3165(c), a copy of this Speedy Trial Act Plan has been forwarded to the Administrative Office of the United States Courts.

FOR THE COURT:



Gerald E. Rosen
Chief Judge

Attachment

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SPEEDY TRIAL ACT PLAN

1. **Authority**

Pursuant to the Speedy Trial Act of 1974, as amended, 18 U.S.C. §§ 3161-3174, and Rule 50 of the Federal Rules of Criminal Procedure, the Judges of the United States District Court for the Eastern District of Michigan have adopted this Speedy Trial Act Plan which sets forth time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases.

This Plan shall take effect upon approval by the Sixth Circuit Judicial Council and supersedes the Speedy Trial Act Revised Final Plan dated July 1, 1980.

2. **Applicability**

(a) **Offenses.** The time limits set forth herein apply to all criminal offenses triable in this court, including cases triable by United States Magistrate Judges, except for Class B misdemeanors, Class C misdemeanors, and infractions. [18 U.S.C. § 3172(2).]

(b) **District.** The term "district" refers to the Eastern District of Michigan.

(c) **Judicial Officer.** The term "judicial officer" refers to any United States District Judge or United States Magistrate Judge. [18 U.S.C. § 3172(1).]

(d) **Court.** The term "court" refers either to the United States District Court for the Eastern District of Michigan or to the judicial officer to whom a specific case is assigned.

(e) **Clerk.** The term "clerk" refers to Clerk of Court and includes his or her designee.

(f) **United States Attorney.** As used in this Plan, the term "United States Attorney" also includes Assistant United States Attorneys.

3. **Priorities In Scheduling Criminal Cases**

Preference shall be given to criminal proceedings as far as practicable, as required by Rule 50 of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial should be given preference over other criminal cases. [18 U.S.C. § 3164(a).]

4. 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 charging that offense shall be filed within 30 days of arrest or service. [18 U.S.C. § 3161(b).]

(b) **Measurement of Time Periods.** If a person has not been arrested or served with a summons on a federal complaint, an arrest will be deemed to have been made at such time as the person (1) is held in custody solely for the purpose of responding to the complaint; (2) is delivered to the custody of a federal official in connection with the complaint, or (3) appears before a judicial officer in connection with the complaint.

(c) **Related Procedures.**

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense charged in a complaint, the judicial officer shall establish for the record the date on which the arrest took place. The United States Attorney appearing at the earliest appearance shall have the arrest information available to provide to the judicial officer.

(2) In 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.

5. Time Within Which Trial Must Commence

(a) **Time Limits.** The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this district;

(2) The date on which a sealed indictment or information is unsealed; or

(3) The date of the defendant's first appearance before a judicial officer of this district. [18 U.S.C. § 3161(c)(1).]

(b) **Retrial; Trial After Reinstatement of an Indictment or Information.** The retrial of a defendant shall commence within 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 the 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 70 days impractical. The extended period shall not exceed 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 which 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).]

(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, 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 by them.

(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. [18 U.S.C. § 3161(h)(5).]

(4) 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 but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

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

(1) If a defendant signs a written consent to be tried before a magistrate judge on a complaint, the time limit shall run from the date of such consent.

(2) 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.

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

(4) 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, 18 U.S.C. § 3006A, or Rule 44 of the Federal Rules of Criminal Procedure.

(2) The court shall have sole responsibility for setting cases for trial after consultation with counsel. 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. [18 U.S.C. § 3161(a).]

(3) 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. A conflict in schedules of the United States Attorney 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 will not force substitution of defense counsel in an attempt to comply with the Speedy Trial Act. This includes a request to transfer an assigned case from one attorney to another attorney within the Federal Defender Office.

(4) In the event a 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 by them.

(5) At the time of filing of a complaint, indictment or information described in paragraph (4), the United States Attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of the time limits.

(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.

6. Defendants in Custody¹

(a) **Time Limits.** Notwithstanding any longer time periods that may be permitted under sections 4 and 5, the trial of a defendant held in custody solely for the purpose of trial on a federal charge shall commence within 90 days following the beginning of continuous custody. [18 U.S.C. § 3164(b).]

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

(1) A defendant is deemed to be in detention awaiting trial when he is 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 custodian authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(2) If a 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 5(e)(3) and (4).

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 2, 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).

(c) **Related Procedures.**

If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of the beginning of such custody.

7. **Exclusion of Time from Computations**

(a) **Applicability.** In computing any time limit under sections 4, 5, or 6, the periods of delay set forth in 18 U.S.C. § 3161(h) and in section 14 *infra*, dealing with pretrial diversion, shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section 8.

(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 the 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 4, he 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)(7), he 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 continuance under 18 U.S.C. § 3161(h)(7), 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*.

(3) The court may grant a continuance under 18 U.S.C. § 3161(h)(7) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstance. The court shall determine the frequency of such reports

in the light of the facts of the particular case.

(d) Post-Indictment Procedures.

(1) The United States Attorney may file a written motion with the court for a determination of excludable time.

(2) In the event that the United States Attorney or the defendant seeks a continuance under 18 U.S.C. § 3161(h)(7), he shall file a written motion with the court requesting such a continuance. The United States Attorney and the defendant may also stipulate that there are grounds for such a continuance.

(3) If it is determined that a continuance is justified, the court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(7), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

(4) Because of the importance of scheduling trial dates, each counsel has a duty to notify the court at an early stage of the proceedings of any motion for continuance on the grounds that the case is unusual or complex.

8. Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 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 70-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 5(d), the 30-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 30-day minimum period will not begin to run. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. [18 U.S.C. § 3161(c)(2).]

9. **Time Within Which Defendant Should be Sentenced**

(a) **Time Limit.** A defendant shall ordinarily be scheduled for sentence not less than 90 days after the date of conviction by verdict, plea of guilty or *nolo contendere*.

(b) **Related Procedures.** If the defendant and counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or *nolo contendere* or a conviction.

10. **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.

(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 which counsel knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which counsel knows to be false and which 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).

11. **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).

12. **Discovery Materials**

Discovery is governed by the Court's Standing Order for Discovery and Inspection and Fixing Motion Cut-Off Date in Criminal Cases.

13. **Reassignment of Cases Between Judges**

The reassignment of criminal cases between judges is governed by local rule.

14. Pretrial Diversion

Because a pretrial diversion determination is not part of the typical criminal proceeding and because of the time delay necessary to make that determination, the actual number of days from the date consent for investigation is signed until the investigation report is completed, or 30 days, whichever is less, is excludable, and the actual number of days from the date the investigation report is received by the United States Attorney until the date the United States Attorney makes a decision on the diversion recommendation, or 30 days, whichever is less, is excludable.

15. Computation of Time

The time limits set forth herein shall be calculated in accordance with Rule 45(a) of the Federal Rules of Criminal Procedure.

16. Statement of Procedures and Innovations That Have Been or Will Be Adopted by the District Court to Expedite the Disposition of Criminal Cases in Accordance with the Speedy Trial Act (18 U.S.C. § 3167(b))

(a) Clerk of the Court

The Administrative Office has developed the following categories of intervals or "clocks" to use in calculating the three time limits, established by the Speedy Trial Act of 1974 and subsequent amendments; Procedural, Location and Excludable Intervals are used to track compliance with the Act.

Procedural Intervals are used to track the progress of the case and to monitor the case's compliance with the 30 and 70 day clocks. Location Intervals are used to keep track of the defendant's location (custody or not) and to monitor the case's compliance with 90-day continuous custody clock. Excludable Intervals are used to keep track of the time excluded by various statutory delays.

The Clerk's Office maintains the case management system that produces various criminal reports to assist in monitoring Speedy Trial compliance. Case managers are responsible for regularly reviewing the Non-Fugitive Pending Trial report for their assigned judicial officer to ensure compliance with the Act.

Magistrate Judges' case managers are responsible for serving copies of all orders of dismissal on the attorneys listed on the docket and on the Pretrial Services Agency.

(b) **Probation Department**

The Court shall whenever possible schedule plea hearings in the morning to allow for the immediate presentence interview of the defendant by the Probation Department. When an immediate interview cannot be completed, the interview shall be completed within 7 days following the date of referral to the Probation Department.

Upon conviction by verdict, plea of guilty or *nolo contendere*, the defense attorney shall immediately escort the defendant or take the referral form (for defendants in custody), to the Probation Department for processing and commencement of the presentence investigation.

The above procedures for immediate interviews will save time, reduce travel expenses, and allow for the effective use of interpreter services when necessary. It will further assure that presentence reports are submitted in a timely manner.

17. **Statistical Information**

The statistical information referenced in 18 U.S.C. § 3166(c) can be obtained at www.uscourts.gov.

Certificate of Approval

The foregoing Amended Speedy Trial Act Plan was approved pursuant to 18 U.S.C. § 3165(c) by a reviewing panel consisting of the members of the Judicial Council of the Sixth Circuit and the Chief Judge of the United States District Court for the Eastern District of Michigan this 1st day of December 2009.



Alice M. Batchelder
Chief Circuit Judge
For the Sixth Circuit Judicial Council



Gerald E. Rosen, Chief Judge
United States District Court
Eastern District of Michigan