

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re: Excludable Time Under The Speedy
Trial Act, 28 U.S.C. § 3161(h)(7) in
Criminal Matters (REVISED)

Administrative Order

22-AO-025

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ADMINISTRATIVE ORDER

The Court issues this Administrative Order as another in a series of Administrative Orders to address Court operations during the time of the Coronavirus Disease that emerged in 2019, known as COVID-19, and its variants, and continues to negatively impact Court operations, in particular with regard to criminal trials.

In response to a declaration on March 13, 2020, under the National Emergencies Act, 50 U.S.C. § 1601 *et seq.*, that the COVID-19 outbreak constitutes a national emergency, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which was signed into law on March 27, 2020. Under section 15002(1) of that Act, on March 29, 2020, the Judicial Conference of the United States found that emergency conditions due to the declared national emergency with respect to COVID-19 have materially continued to affect the functioning of the federal courts. The CARES Act authorized the use of video teleconferencing and telephone conferencing for all court criminal hearings listed in section 15002(b). This Court has continued this authorization through May 20, 2022 (22-AO-13).

COVID-19 and its variants, and the congestion caused by its aftermath, continue to cause disruption in this District.

Cases of COVID-19 continue to be diagnosed among employees and contractors at the Detroit courthouse. The number of COVID positive cases in the counties within

the Eastern District of Michigan is increasing. (Detroit Free Press, Friday, April 22, 2022, p. 5A.)

The Court operations continuing to be impacted by COVID-19 include the Jury Department, the U.S. Marshals, and Judicial Trial Management of trials.

In addition, there are significant issues with regard to criminal defense attorney access to incarcerated defendants and to incarcerated defendants' necessary access to discovery at their facilities.

With respect to these COVID-related impediments, the Court finds as follows:

JURY DEPARTMENT

Presently, up to three jury selections per day on Tuesdays, Wednesdays, and Thursdays; two in Detroit and one in a single divisional office can occur each week. Significantly, only two jury selections/trials with a custodial defendant may be conducted district-wide for the duration of those trials. Criminal trials are limited to a maximum of two in-custody co-defendants per trial, absent exceptional circumstances.

While there is no longer a social distancing requirement for seated trial jurors, there is a requirement that jurors wear KN-95 masks during trials. Social distancing is required during the jurors' drink, snack, and lunch breaks because they must remove their masks to eat and drink. Therefore, the Jury Department must secure additional temporary satellite rooms within the places of holding court to ensure social distancing during those breaks.

U.S. MARSHALS

In the last three to four years, this District has lost 18 operational deputy marshals due to retirements or transfers. Thus, there is presently a critical shortage of

this Court's Marshal staffing due to the COVID-imposed shutdown of new Deputy Marshal national training facilities over the last two years. Marshals are short staffed with regard to criminal trials, in particular with regard to incarcerated defendants, trials involving attendant co-defendant separation issues, and non-defendant incarcerated prisoners called as witnesses by the government and the defense. Every criminal case defendant requires, as to each incarcerated defendant, staffing of at least three dedicated marshals for trial security.

IMPACT ON INCARCERATED DEFENDANTS

Incarcerated defendants require access to defense counsel and to discovery at their incarceration sites.

During COVID-19, some sites of pretrial incarceration have limited defendants' in-person appointments with defense counsel, both in number and time allocations. In addition, some of these facilities further impose restrictive time limitations on incarcerated defendants' viewing of discovery on computers.

This intermittent inability of criminal defense counsel to meet their incarcerated clients for the extended periods of time necessary, in particular in complex multi-defendant criminal cases, to discuss discovery, motions, plea agreements, and trial issues, can impair preparation/resolution, whether by plea or trial. This issue is particularly acute in complex trials with extensive discovery. 18 U.S.C. § 3161(h)(7)(B)(i). These effective representation issues can impair the ability of defense counsel in criminal trials to ensure effective assistance of counsel under the Sixth Amendment. See 18 U.S.C. § 3161(h)(7)(B), and (B)(iv). Defense counsel require reasonable time periods necessary for effective preparation, taking into account the

exercise of due diligence and the COVID-related limitations discussed above. 18 U.S.C. § 3161 (h)(7)(B)(iv).

RELIANCE ON FINDINGS

The Judges of this Court may rely upon the findings above concerning the impact of COVID-related impediments to the conduct of a criminal jury trial when determining whether:

- (1) Proceeding with criminal jury trials under speedy trial limits would be impossible, or result in a miscarriage of justice, 18 U.S.C. § 3161(H)(7)(B)(i).
Trial postponements/waivers of speedy trial limits by the presiding judge can be supported by this Administrative Order and can be excluded as waivers under the Speedy Trial Act from May 22, 2022 until further order by the presiding judge, when that judge specifically finds that
- (2) The ends of justice served by the postponements outweigh the best interest of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A).

IT IS SO ORDERED.

FOR THE COURT:



Sean F. Cox
Chief Judge