

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**



**SPEEDY TRIAL ACT  
PLAN**

APPROVED BY THE COURT: June 23, 2003

APPROVED BY THE JUDICIAL  
COUNCIL OF THE NINTH CIRCUIT: August 28, 2003

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1. AUTHORITY

Pursuant to the requirements the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq.), the Speedy Trial Act Amendments of 1979 (Pub. L. No. 96-43, 43 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 Central District of California have adopted the following plan setting forth time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings. This plan modifies and to the extent it contradicts, supersedes General Order No. 209, filed August 7, 1980. This plan shall take effect upon approval of the Judicial Council of the Ninth Circuit.

2. APPLICABILITY

- a. Offense. The time limits set forth herein are applicable to any criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a Class B or C misdemeanor or infraction, or an offense triable by court-martial, military commission, provost court, or other military tribunal).
- b. Judge. The terms “judge,” “judicial officer” or “court” mean, unless otherwise indicated, any United States district and magistrate judge.
- c. Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word “defendant” includes such persons unless the context indicates otherwise.
- d. Court Days. As used in this plan, “court days” includes all days which the court regularly sits and excludes Saturdays, Sundays, and official United States Government holidays.

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 or other disposition of cases involving a detained person who is being held in detention solely because he is awaiting trial, and a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk, shall be accorded priority. (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 subsequently filed in connection with such charge shall be filed within 30 days of the 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 charge, an arrest will be deemed to have been made at such time as the person:
  - i. is held in custody solely for the purpose of responding to a Federal charge;
  - ii. is delivered to the custody of a Federal official in connection with a Federal charge; or
  - iii. appears before a judicial officer in connection with a Federal charge.
- c. Related Procedures.
  - i. 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.
  - ii. 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. A summons served by mail shall be considered to have been served on the date shown on the receipt thereof.

5. TIME WITHIN WHICH TRIAL MUST COMMENCE

- a. Time Limits.
  - i. Unless the defendant consents in writing to the contrary, the trial shall not commence less than 30 days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed *pro se*. (18 U.S.C. § 3161(c)(2))
  - ii. In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with commission of an offense shall commence within 70 days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is

pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within 70 days from the date of such consent. (18 U.S.C. § 3161(c)(1))

iii. The trial of any detained person who is being held in detention solely because he is awaiting trial, and a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk shall commence not later than 90 days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in 18 U.S.C. § 3161(h) are excluded in computing the time limitation specified in this paragraph. (18 U.S.C. § 3164(a) and (b))

b. 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 shall be determined as follows.

- i. 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)) A dismissal of the indictment on order of the judge with the consent of the defendant shall be considered dismissed on motion of the defendant.
- ii. If the original indictment or information was dismissed on motion of the United States Attorney and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but any period of delay from the date the charge was dismissed to the date the time limit would commence to run as to the subsequent charge shall be excluded from the computations. (18 U.S.C. § 3161(h)(6))
- iii. 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 the trial on the original indictment or information. (18 U.S.C. § 3161(h)(6))

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 be required if the time limit for commencement of trial is to be satisfied.

- 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 subsequently is 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 plea became final. (18 U.S.C. § 3161(i))
  
- d. Retrial and Trial on Charges Reinstated. If a defendant is to be tried upon an indictment or information dismissed by the trial court and reinstated following an appeal or if the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence 70 days from the date the order occasioning the trial or retrial becomes final. If the defendant is to be tried again following an appeal or collateral attack, the trial shall commence within 70 days from the date the action occasioning the retrial becomes final except that the court retrying may extend the period for retrial not to exceed 180 days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from the passage of time shall make trial within 70 days impractical. The periods of delay enumerated in 18 U.S.C. § 3161(h) are excluded in computing the time limitations specified in this section. (18 U.S.C. §§ 3161(d)(2) and 3161(e))
  
- e. Measurement of Time Periods. For purposes of this section:
  - i. If a defendant signs a written consent to be tried before a magistrate on a complaint and no indictment or information charging the offense has been filed, the time limit for trial shall run from the date of such consent.
  
  - ii. 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 on this district when the papers in the proceeding or certified copies thereof are received by the clerk of the court.
  
  - iii. A trial in a jury case shall be deemed to commence at the beginning of voir dire.
  
  - iv. 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.

- i. Defendants shall be provided counsel as soon as feasible after they are taken into custody, when they appear before a district or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district or magistrate judge otherwise considers appointment of counsel appropriate under the Criminal Justice Act, whichever occurs earliest. (Criminal Justice Act, Rule 44 of the Federal Rules of Criminal Procedure and Criminal Justice Act Plan for the Central District of California)
- ii. The court shall have sole responsibility for setting cases for trial after consultation with the counsel for the defendant and the attorney for the Government. At the arraignment or as soon thereafter as is practicable, each case shall be set for trial. (18 U.S.C. § 3161(a))
- iii. A conflict in schedules of the Assistant United States Attorney or defense counsel shall not be grounds for a continuance or delay in the setting of a trial date except under circumstances approved by the court and called to the court's attention at the earliest practicable time. The United States Attorney will assign or reassign cases in such manner that the government will be prepared to try cases on the date set pursuant to subparagraph 5(f)(ii) above.
- iv. In the event that 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 therewith.
- v. At the time of the filing of a complaint, indictment, or information such as described in above subparagraph 5(f)(iv), the United States Attorney shall give written notice to the court of that circumstance and his position with respect to the computation of the time limits.
- vi. Pre-trial hearings deemed necessary to assist counsel in the preparation or disposition of their case 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 CUSTODY AND HIGH RISK DEFENDANTS



- a. “High-Risk Defendant” Definition. A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.
- b. Time Limits. Notwithstanding any longer time periods that may be permitted under paragraphs 4 and 5 above, the following time limits will be applicable to a defendant in custody solely because he is awaiting trial and a high-risk defendant:
  - i. 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.
  - ii. The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk. (18 U.S.C. § 3164(b))
- c. Measurement of Time Periods. For the purposes of this section:
  - i. 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 custodial authority has an independent basis (not including detainer) for continuing to hold the defendant.
  - ii. 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.
  - iii. A trial shall be deemed to commence as provided in subparagraphs 5(e)(iii) and (iv).
- d. Related Procedures.
  - i. 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.
  - ii. The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered to be high-risk.
  - iii. If the court finds that the filing of a “high-risk” designation as a public

record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

7. MINIMUM TIME 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 defendant first appears before a judicial officer of this district either through counsel 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 subparagraph 5(b), 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))

8. EXCLUSION OF TIME FROM COMPUTATIONS

- a. Applicability. In computing any time limit under above paragraphs 4, 5, and 6, the 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 paragraph 8 below.
- b. Records of Excludable Time. The clerk of the court shall record on the docket the filing of 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. Stipulations.

- i. The attorney for the Government and the attorney for the defendant may at any time enter into stipulations with respect to accuracy of case record entries regarding excludable time.
- ii. To the extent that the amount of time stipulated by the parties does not exceed the amount on the case record for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.
- iii. To the extent that the amount of time stipulated exceeds the amount listed in the case record, the stipulation shall have no effect unless approved by the court.

d. Pre-Indictment Procedures.

- i. 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 paragraph 4 herein, the United States Attorney shall 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.
- ii. The motion of the United States Attorney shall state:
  - (1) the period of time proposed for exclusion;
  - (2) the basis of the proposed exclusion; and
  - (3) if the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether 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*.

- iii. The court may grant an extension of time within which an indictment or information must be filed under 18 U.S.C. § 3161(h)(8) 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 extension of time is to a date not certain, the court shall require one or both parties to inform the court promptly if the circumstances that justify the extension no longer exist. In addition, the court shall require one or both parties to file with the court periodic reports 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.

e. Post-Indictment Procedures.

- i. In the event the court extends the time for a trial beyond the time limit set forth in paragraphs 5, 6 and 7, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h). Any *ex parte* determination that time is excludable shall be subject to a motion to vacate the determination made within five days of the entry of the decision on the docket. No action following the determination that time is excludable will be deemed final until the time for such motion to vacate has passed. In the absence of a need for an extension of time, the court will not ordinarily rule on the excludability of any period of time.
- ii. If it is determined that an extension is justified, the court shall state for the record the fact or facts on which the determination is made either orally or in writing. If the extension of time is granted under 18 U.S.C. § 3161(h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the extension outweigh the best interests of the public and defendant in a speedy trial. If the extension of time 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 extension no longer exist. In addition, the court shall require one or both parties to file a report 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.

9. TIME WITHIN WHICH DEFENDANT SHOULD BE SENTENCED

- a. Time Limit. A defendant shall ordinarily be sentenced within 90 days of conviction or plea of guilty or *nolo contendere*.
- b. Related Procedures. If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a conviction or plea of guilty or *nolo contendere*.

10. JUVENILE PROCEEDINGS

- a. Definitions. “Juvenile” is a person who has not attained his 18<sup>th</sup> birthday, or for the purpose of proceedings and disposition for an alleged act of juvenile delinquency, a person who has not attained his 21<sup>st</sup> birthday, and “juvenile delinquency” is the violation of a law of the United States committed by a person prior to his 18<sup>th</sup> birthday which would have been a crime if committed by an adult or a violation by such a person of 18 U.S.C. § 922(x). (18 U.S.C. § 5031)
- b. Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun. (18 U.S.C. § 5036)
- c. Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(d).

## 11. SANCTIONS

- a. Dismissal. Failure to comply with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161 et seq., may entitle the defendant to dismissal of the charges against him. Nothing in this plan shall be construed to require that a case be dismissed in circumstances in which dismissal would not be required by 18 U.S.C. § 3161 et seq. or the Interstate Agreement on Detainers. In particular, it should be noted that the time period for sentencing set forth in paragraph 9 herein is a statement of this district’s voluntarily assumed goal, and is not required nor enforced by the Speedy Trial Act.
- b. High-Risk Defendants. Failure to commence trial of a high-risk defendant, through no fault of the accused or the accused counsel, or failure to commence trial of a designated releasee as specified in 18 U.S.C. § 3164(b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying the nonfinancial conditions of release to insure that he shall appear at trial as required. (18 U.S.C. § 3164)
- c. Alleged Juvenile Delinquents. If an alleged delinquent in detention pending trial is not brought to trial within 30 days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the United States Attorney shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. (18 U.S.C. § 5036)

- d. Discipline of Attorneys. The court may punish counsel as provided in 18 U.S.C. §§ 3162(b) and (c) in any case in which counsel for the defendant or the attorney for the Government:
- i. Knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial;
  - ii. Files a motion solely for the purpose of delay which he knows is totally frivolous and without merit;
  - iii. Makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance;  
or
  - iv. Otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161.

(18 U.S.C. § 3162)

12. 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 undertake 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).