

**Plan for Prompt
Disposition of
Criminal Cases**

**Final Plan Pursuant to Speedy Trial
Act of 1974
18 U.S.C. §3165(e)(3)**

(Amended February 1, 1995)



Chief Judge J. Phil Gilbert
District Judge William D. Stiehl
District Judge Paul E. Riley
District Judge James L. Foreman
District Judge William L. Beatty

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

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Section I

Introductory Material

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DISTRICT COURT PLAN FOR ACHIEVING PROMPT
DISPOSITION OF CRIMINAL CASES

Effective February 1, 1995

I. INTRODUCTORY MATERIAL

A. Adoption of Plan and Rules by the Court.

Pursuant to the requirements of the Speedy Trial Act of 1974 (18 U.S.C. §3165(e) as amended) the judges of the United States District Court for the Southern District of Illinois have adopted the following District Plan for the Disposition of Criminal Cases. Section II of this plan also adopts certain time limits, procedures, and rules for the disposition of criminal cases and juvenile proceedings pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208) and the Federal Juvenile Delinquency Act (18 U.S.C. §§5036, 5037).

B. The Planning Group.

This plan has been adopted after consultation with the Speedy Trial Act Planning Group for the Southern District of Illinois pursuant to 18 U.S.C. §§3165-3169.

The planning group consists of:

The Honorable J. Phil Gilbert, Chief Judge of the Southern District of Illinois
The Honorable Clifford J. Proud, United States Magistrate Judge
Michael Carr, Chief, Criminal Division, United States Attorney's Office
William Lucco, Esq.
Stuart J. O'Hare, Clerk, United States District Court
Paula G. Phillips, Esq.
Renée E. Schooley, Assistant Federal Public Defender
Bruce Stewart, Esq.
Brian K. Trentman, Esq.

C. Availability of the Plan.

Copies of this plan will be made available for inspection and copying at each office of the Clerk of the United States District Court for this district. Copies of Part II of this plan wherein the Court adopts certain procedures for the disposition of criminal cases shall be furnished to all interested persons by the Clerk of the Court.

Section II

Statement of Time Limits Adopted by the Court and Procedures for Implementing Them

II. STATEMENT OF TIME LIMITS TO TAKE EFFECT AND PROCEDURES FOR IMPLEMENTING THEM

Effective February 1, 1995, the following shall constitute the plan for achieving the prompt disposition of criminal cases in the Southern District of Illinois including certain rules of procedure and discovery.

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§5036, 5037), the judges of the United States District Court for the Southern District of Illinois 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. Applicability.

(a) **Offenses.** Pursuant to 18 U.S.C. §§3161 and 3172(2), the time limits set forth herein are applicable to all criminal offenses triable in this Court, including cases triable by United States Magistrates, except for Class B or C misdemeanors or infractions, as defined in 18 U.S.C. §§3559(a)(7), (8), and (9). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.

(b) **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.

2. Priorities in Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) 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.

3. 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 arrest or service.

(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 30 day period prescribed in subsection (a), such period shall be extended an additional 30 days.

(c) **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

(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.

4. **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.

(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 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 70 days impractical. The extended period shall not exceed 180 days.

(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 will 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.

(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.

(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, 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 and no indictment or information charging the offense has been filed, 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 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 and 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.

(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 Assistant United States Attorneys or defense counsel will be ground for a continuance or delayed setting only if approved by the Court and called to the Court's attention at the earliest practicable time.

(4) 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.

(5) At the time of the 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.

(7) Motions, discovery, and inspection shall commence following arraignment in accordance with section 12.

5. **Defendants in Custody**

(a) **Time Limits.** Notwithstanding any longer time periods that may be permitted under sections 3 and 4, the following time limit will also be applicable to defendants in custody:

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.

(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 custodial 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 sections 4(e)(3) and 4(e)(4).

(c) **Related Procedure.**

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.

6. **Exclusion of Time from Computations.**

(a) **Applicability.** In computing any time limit under sections 3, 4, or 5, 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 section 7.

(b) **Records of Excludable Time.** The Clerk of the Court 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) **Stipulations.**

(1) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket 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.

(3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

(d) **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 3, 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)(8), 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 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*.

(3) The Court may grant a continuance 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 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.

(e) **Post-Indictment Procedures.**

(1) At each appearance of counsel before the court, counsel shall examine the Clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate attention any claim that the Clerk's record is in any way incorrect.

(2) In the event that the Court continues a trial beyond the time limit set forth in sections 4 or 5, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. §3161(h).

(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)(8), the Court 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), In an effort to ensure proper measurement of the 70 day time limit within which trial must commence, as set forth under section 4(a), the United States Attorney shall notify the Court in writing on the date, by his or her calculation, that there are 25 days remaining within which to commence trial.

7. 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 4(d), the 30 day minimum period will 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.

8. Time Within Which Defendant Should Be Sentenced.

(a) **Time Limit.** A defendant shall ordinarily be sentenced within 90 days of the date of his 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 plea of guilty or nolo contendere or a conviction.

9. **Juvenile Proceedings.**

(a) **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, as provided in 18 U.S.C. §5036.

(b) **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(c).

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 against him 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) **High-Risk Defendants.** A high-risk defendant, as defined in 18 U.S.C. §3164(a), whose trial has not commenced within the time limit set forth in 18 U.S.C. §3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government have his release conditions automatically reviewed. 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 his nonfinancial conditions of release under chapter 207 of Title 18, U.S.C. to ensure that he shall appear at trial as required.

(c) **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 he knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which he 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).

(d) **Alleged Juvenile Delinquents.** An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. §5036 shall be entitled to dismissal of his case pursuant that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

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, he 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. **Pretrial Motions Discovery and Inspection.**

(a) Subject to the following provisions of this section any and all pretrial motions may be filed after entry of a plea but must be filed within 10 days thereafter unless good cause for delay is shown in the motion.

(b) Except for good cause shown, the Court may not extend the time for motions under Federal Rule of Criminal Procedure 12(b)(3) beyond 10 days after plea. Such motions will be ruled on promptly, so that the trial need not be delayed.

(c) Within five (5) days after arraignment, the United States Attorney and the defendant's attorney shall confer and, upon request, discovery and inspection shall be made by both parties in accordance with Federal Rule of Criminal Procedure 16.

(d) If in the judgment of the United States Attorney it would not be in the interests of justice to make any one or more disclosures set forth in paragraph (c) and requested by defendant's counsel, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to defendant's counsel, and signed personally by the United States Attorney or the Assistant United States Attorney handling the case, and shall specify the types of disclosure that are declined. If the defendant seeks to challenge the declination, he shall proceed pursuant to subsection (e) below.

(e) If additional discovery or inspection is sought, defendant's attorney shall confer with the appropriate Assistant United States Attorney within ten (10) days of the arraignment, with a view to satisfying these requests in a cooperative atmosphere without recourse to the Court. The request may be oral or written and the United States Attorney shall respond in like manner.

(f) In the event defendant thereafter moves for additional discovery or inspection, his motion shall be filed within the time set by the Court for the filing, of pretrial motions. It shall contain:

- (1) the statement that the conference prescribed in (e) above was held;
- (2) the date of said conference;

(3) the name of the Assistant United States Attorney with whom conference was held; and

(4) the statement that agreement could not be reached concerning the discovery or inspection that is the subject of defendant's motion.

(g) Any duty of disclosure and discovery set forth in this plan is a continuing one and the United States Attorney shall produce any additional information gained by the government.

(h) Any disclosure granted by the government pursuant to this plan of material within the purview of Rule 16, Federal Rules of Criminal Procedure, shall be considered as relief sought by the defendant and granted by the Court.

Section III

Adoption and Effective Date

III. ADOPTION AND EFFECTIVE DATE

Pursuant to rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C., chapter 208 as amended) and the Federal Juvenile Delinquency Act (18 U.S.C. §§5036, 5037) the foregoing is adopted as the District Court Plan for the Disposition of Criminal Cases in the Southern District of Illinois. This includes the adoption of certain rules and procedures for criminal cases contained in Part II of this plan.

Upon approval of the reviewing panel designated in accordance with 18 U.S.C. §3165(c) and Rule 50(b) of the Federal Rules of Criminal Procedure this plan, and the time limits and procedures set forth herein, shall become effective on February 1, 1995 and shall supersede those previously in effect.