

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

ORDER

The SPEEDY TRIAL ACT (18 U.S.C. § 3161 et seq.) requires that each District of the United States Courts conduct continuing study of the District's plan for the disposition of criminal cases in accordance with the Act. The planning group of this District has determined that the District's present **Speedy Trial Act Plan for Achieving Prompt Disposition of Criminal Cases** requires amendment to correspond to existing practices in this District as of January 1, 2015. Accordingly, it is

ORDERED

That this District's **Speedy Trial Act Plan for Achieving Prompt Disposition of Criminal Cases** is modified as follows:

I. INTRODUCTORY MATERIAL

- a. Under 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), as amended, and the FEDERAL JUVENILE DELINQUENCY ACT (18 U.S.C. §§ 5036 and 5037), the judges of the United States Court for the Northern District of Mississippi have adopted a final plan of time limits and procedures to minimize undue delay to further the prompt disposition of criminal cases within the jurisdiction of the court. This plan has been modified to reflect the Court's practices in this District as of January 1, 2015.
- b. This plan will be available for public inspection on the official web site of the United States District Court for the Northern District of Mississippi.

II. AMENDED STATEMENT OF TIME LIMITS ADOPTED BY THE COURT
AND PROCEDURES FOR IMPLEMENTING THEM IN ACCORDANCE WITH THE SPEEDY TRIAL ACT

A. Applicability.

1. Offenses. The time limits established in this Plan apply to all criminal offenses triable in this court, including cases triable by United States Magistrate Judges, except for petty offenses as defined in 18 U.S.C. §19. Except as specifically provided they are not applicable to proceedings under the FEDERAL JUVENILE DELINQUENCY ACT.
2. Persons. The time limits apply to any *person* who has been arrested or served with criminal summons whether they have been indicted or charged by information or not; the word *defendant* includes all such persons unless the context indicates otherwise.

B. Priorities in Scheduling Criminal Cases.

1. The court will give preference to criminal proceedings as far as practicable as required in Rule 50(a) of the FEDERAL RULES OF CRIMINAL PROCEDURE; and 18 U.S.C. § 3164 as modified by the SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979.
2. The court will give preference over other criminal cases to trial of defendants in custody and high-risk defendants as defined in this Plan.

C. Time for Filing an Indictment or Information.

1. 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 must be filed within 30 days of arrest or service.
2. 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 C(1) of this section, the period will be extended an additional 30 days.
3. Measurement of Time Periods.
 - (a) 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 when the person (i) is held in custody solely for the purposes 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.
 - (b) A defendant who signs a written consent to be tried before a magistrate judge must, if no indictment or information charging the offense has been filed, be deemed indicted on the date of that consent.
 - (c) If a case is transferred to this District under Rule 20 of the FEDERAL RULES OF CRIMINAL PROCEDURE, the indictment or information will be deemed filed in this District when the documents in the proceeding are received by the clerk by mail or in electronic form.
4. Related Procedures.
 - (a) 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 must establish for the record the date on which the arrest took place.
 - (b) Absent a showing to the contrary, a summons will be considered to have been served on the date of service shown on the return.
 - (c) Grand Jury. Members of the grand jury will be drawn from the District as a whole and will serve for one year unless the period of service of a particular grand jury is extended beyond twelve months by order of the Chief Judge of this court. Unless otherwise directed, sessions of the grand jury will be held, if practicable, during the third week of every month at Oxford or at a place designated by the court. The grand jury is subject to recall at any time during its period of service upon order of a judge of this court or call of the foreman of the grand jury. The initial session of each grand jury will constitute the organizational meeting of that grand jury. Reports

of the grand jury may be received by any United States District Judge or United States Magistrate Judge of this District.

- (d) At the time of the defendant's first appearance before a judicial officer of this District, the officer will take appropriate steps to assure that the defendant is represented by counsel and will appoint counsel where appropriate under the CRIMINAL JUSTICE ACT and Rule 44 of the FEDERAL RULES OF CRIMINAL PROCEDURE. The judicial officer will also inform the defendant of his rights under this Plan.

D. Arraignment.

1. Arraignment must be conducted as soon as practicable.

An arraignment will be considered to take place for purposes of the Plan at the time the defendant first appears for the proceedings provided for by Rule 10, FEDERAL RULES OF CRIMINAL PROCEDURE, whether or not a plea is actually entered at that time.

E. Time Within Which Trial Must Commence.

1. Time Limits and Priority Defendants.

- (a) The trial of a defendant must commence within seventy days from the later of the filing date (and making public) of the indictment or information, or from the date the defendant has appeared before a judicial officer of the court in which the charge is pending. If a defendant consents in writing to be tried on a complaint before a magistrate judge, the trial must commence within seventy days from date of that consent [§ 3161(c)(1)]. Unless the defendant consents in writing to the contrary, the trial may not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se [§ 3161(c)(2)].
 - (b) The court must give priority to trial or disposition of cases involving (i) a detained person who is being held in detention solely because he is awaiting trial; or (ii) a released person who is awaiting trial and has been designated by the attorney for the government as being high risk. A high-risk defendant is defined as one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.
 - (c) The trial of any person described in subsection (b)(i) and (b)(ii) of this subsection must commence not later than ninety days following the beginning of continuous detention or designation of high risk by the attorney for the government. The periods of delay enumerated in § 3161(h) are excluded in computing the time limitation specified in this paragraph.
2. **Retrial.** The retrial of a defendant must commence within seventy days from the date the order occasioning the retrial becomes final. If the retrial 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 days impractical. The extended period may not exceed 180 days.
 3. **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 later permitted to withdraw it, the arraignment with respect to the entire indictment or information will be deemed to have been held on the day the order

permitting withdrawal of the plea becomes final.

4. 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 the original,¹ the time limit applicable to the later charge will be determined as follows:
- (a) If the original indictment or information was dismissed on motion of the defendant before the filing of the later charge, the time limit will be determined without regard to the existence of the original charge.
 - (b) If the original indictment or information is pending at the time the later charge is filed, the trial must 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 with them.
 - (c) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the later charges, the trial must 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 will be excluded from the computations; the excludable time is that between the dismissal of the original indictment or information and the date the time would have commenced to run on the later charge had there been no previous charge.
 - (d) If the later charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the later charge will be determined without regard to the existence of the original indictment or information but the time limit for commencement of trial may require earlier action to satisfy the time limitations of this section.

5. Measurement of Time Periods.

For the purpose of this section:

- (a) 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.
- (b) If a case is transferred under Rule 20 of the FEDERAL RULES OF CRIMINAL PROCEDURE, and the defendant later 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.
- (c) A trial in a jury case will be deemed to commence at the beginning of voir dire.

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).

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

6. Related Procedures.

- (a) The court has sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon after arraignment as practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar.
- (b) The court will manage individual calendars with the intent to reach every criminal case set for trial during the week of original setting. Assistant United States Attorneys or counsel for the defendant must call to the court's attention a conflict in schedules at the earliest practicable time, but a conflict will not necessarily be grounds for a continuance or delayed setting except under circumstances approved by the court. Attorneys for the government must familiarize themselves with the scheduling procedures of each judge so as to be ready for trial consistent with the terms and provisions of the SPEEDY TRIAL ACT OF 1974 and as amended in 1979.
- (c) If 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 must 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 with it.
- (d) The United States Attorney must give written notice to the court of the circumstance described in paragraph (c) and of his or her position with respect to the computation of the time limits at the time of the filing of a complaint, indictment, or information.
- (e) Request for Discovery and Inspection. Upon employment or appointment, defense counsel must immediately make requests for information that the defendant is entitled to receive, as a matter of right, under Rule 16(a)(1)(A), (B), (C) and (D), FEDERAL RULES OF CRIMINAL PROCEDURE. If the defendant requests and receives any items of discovery under Rule 16(a)(1)(C) or (D), FEDERAL RULES OF CRIMINAL PROCEDURE, then the government will be entitled to make requests and receive from the defendant, as a matter of right, the information described in Rule 16(b)(1)(A) and (B). The requests should be made within the time permitted for doing so by the scheduling order entered in the case and without recourse to the court. Rule 16 motions shall not be filed, unless the movant has made requests which have been denied.
- (f) Pretrial Motions. Counsel must file all pretrial motions, including but not limited to motions to suppress and motions under Rules 7, 12, 14, 16 and 41, FEDERAL RULES OF CRIMINAL PROCEDURE within the time permitted for doing so by the scheduling order entered in the case.

The court will hear and rule upon all motions promptly so as not to delay the trial. Motions must be clear and concise and must state precisely the relief requested. Any Rule 16 motion must affirmatively indicate that a request for discovery and inspection has been made and the request denied before the motion was filed. If the court finds that a motion is frivolous or filed for delay, it may assess costs against the party or the attorney who filed it.

- (g) Decision by Magistrate Judge. Full-time magistrate judges will hear and dispose of the following types of motions:
- (i) Motions under Rule 7, FEDERAL RULES OF CRIMINAL PROCEDURE, to strike surplusage from an indictment or information, to amend an information, or for a bill of particulars;
 - (ii) Motions under Rule 15, FEDERAL RULES OF CRIMINAL PROCEDURE, to take depositions of witnesses and for production at such depositions of designated books, papers, documents, recordings, or other material not privileged;
 - (iii) Motions for discovery and inspection and for protective and modifying orders under Rule 16, FEDERAL RULES OF CRIMINAL PROCEDURE;
 - (iv) Motions under Rule 17(b), FEDERAL RULES OF CRIMINAL PROCEDURE, for issuance and service of defense witness subpoena at government expense and to quash or modify subpoena under Rule 17(c), FEDERAL RULES OF CRIMINAL PROCEDURE.
- (h) If such motions have been served on opposing counsel seven days before arraignment, or if the opposing party is prepared to reply, the court will hear the motions on the date of arraignment. Any motions not heard at the arraignment will be decided by the magistrate judge promptly upon full briefing.
- (i) All motions other than those enumerated above will be heard and decided by the district judge assigned to the case.
- (j) All requests for service of witness subpoenas must be made within a reasonable time before the date set for trial. If reasonably possible before trial, counsel for the parties should ascertain from the marshal, or other process server, whether the issued subpoenas have been served.
- (k) Notice of arraignment will not be sent out by the clerk until the clerk has been advised by the marshal that a warrant has been executed or summons served.

F. Exclusion of Time from Computations.

1. Applicability. The periods of delay set forth in 18 U.S.C. § 3161(h) and § 3161(h) must be excluded in computing any time limit under sections C. or E.
2. Records of Excludable Time. The clerk of the court must enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information regarding excludable periods of time for each criminal defendant. The United States Attorney must report to the clerk excludable time from proceedings which took place before the filing of an indictment or information.
3. Stipulations.
 - (a) The attorney for the government and the attorney for the defendant may enter into stipulations regarding the accuracy of the docket entries recording excludable time at any time.

- (b) Unless it has no basis in fact or law the amount of time stipulated by the parties is conclusive as between them so long as it does not exceed the amount recorded on the docket for any excludable period of delay. The stipulation also is conclusive as to a co-defendant for the limited purposes of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.
- (c) Any amount of time stipulated which exceeds the amount recorded on the docket will have no effect unless approved by the court.

4. Pre-Indictment Procedures.

- (a) If the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in subsection C. above, he or she may file a written motion with the court for determination of excludable time. If the United States Attorney seeks a continuance under 18 U.S.C. §§ 3161(h)(7), he or she must file a written motion with the court requesting the continuance.
- (b) The motion of the United States Attorney must 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)(7), it must 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*.
- (c) 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 will 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 will require one or both parties to file periodic reports bearing on the continued existence of those circumstances. The court will determine the frequency of those reports in the light of the facts of the particular case.

5. Post-Indictment Procedures.

- (a) If the court continues trial beyond the time limit set forth in subsection E., it will determine whether the limit may be recomputed by excluding time under 18 U.S.C. § 3161(h). Absent a need for a continuance, the court will not ordinarily rule on the excludability of any period of time.
- (b) If the court determines that a continuance is justified, it must 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 must 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 the speedy trial. If the continuance is to a date not certain, the court will 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 will require one or both parties to file periodic reports bearing on the continued existence of those circumstances. The court will determine the frequency of those reports in the light of the facts of the particular case.

6. Minimum Period for Defense Preparation. Unless the defendant consents in writing to the contrary, the trial may 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. Where 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 under section E.(4), the 30-day minimum period will also be determined by reference to the earlier indictment or information. Resumption of prosecution on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, does not institute a new 30-day minimum period. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances.

G. Time Within Which defendant Should be Sentenced.

1. Time Limits. A defendant should ordinarily be sentenced within ninety days of the date of his or her conviction or plea of guilty or *nolo contendere*.
2. Related Procedures. A pre-sentence investigation may be initiated before a plea of guilty or *nolo contendere* or a conviction if the defendant and defense counsel consent.

H. Juvenile Proceedings

1. Time Within Which Trial Must Commence. An alleged delinquent who is detained pending trial as provided in 18 U.S.C. § 5036 must be brought to trial within thirty days of the date on which detention began.
2. Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, the court must conduct a separate dispositional hearing no later than twenty court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

I. Sanctions.

1. Dismissal. 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 may be construed to require that a case be dismissed or a defendant released from custody in circumstances in which that action would not be required by 18 U.S.C. §§ 3162 and 3164.
2. Discipline of Attorneys. In a case in which counsel (a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (b) files a motion solely for the purpose of delay which he or she knows is frivolous and without merit, (c) makes a statement for the purpose of obtaining a continuance which he or she knows to be false and which is material to the granting of the continuance, or (d) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the court may punish counsel as provided in 18 U.S.C. §§ 3162(b) and (c).
3. Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limits set forth in 18 U.S.C. § 5036 is entitled to dismissal of the case under that section unless the Attorney General shows that the juvenile or the juvenile's counsel caused or consented to the delay or delay would be in the interest of justice in that particular case.

J. 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 or she must attempt to obtain the presence of the prisoner for trial or cause a detainer to be filed under 18 U.S.C. §§ 3161(j).

K. Monitoring Compliance with Time Limits.

1. Responsibilities of Clerk. In addition to maintaining all statistical data required by the Administrative Office of the United States Courts, the clerk will from time to time report to the chief judge of the court each case in which there is a failure to comply with any time limit set in this Plan.
2. Responsibilities of the United States Attorney. To assist the clerk of the court in receiving data concerning a defendant in a criminal action in this court, the United States Attorney must complete a Criminal Case Cover Sheet in its entirety and submit it to the clerk when filing a complaint, indictment or information.
3. Responsibilities of the United States Marshal.
 - a. At the close of each week, the United States Marshal must send to the court a report form listing all persons in custody and indicating the date and place of their detention. A copy of the report will be furnished to each judge of this court.
 - b. (1) When a defendant is to be transferred under Rule 40 and Rule 5, the United States Marshal must arrange to have the defendant promptly transferred to this District.

(2) In proceedings under Rule 40 and Rule 5 of the FEDERAL RULES OF CRIMINAL PROCEDURE, upon the order by the judicial officer that the defendant will be "held to answer" in this District, reasonable travel time, not exceeding ten days, will be excluded [§ 3161(h)(1)(F)].

L. Procedures after Affirmance. The clerk must notify the court, the United States Attorney, United States Probation Service, United States Marshal, the defendant and defense counsel immediately upon receiving the mandate of an appellate court affirming a conviction, and the court will take appropriate action to execute the sentence imposed or take other action, including review and reconsideration of defendant's custody or conditional release status, consistent with the interest of justice.

THIS, the 27th day of January, 2015.

Sharion Aycock

Sharion Aycock, Chief United States District Judge

Michael P. Mills

Michael P. Mills, United States District Judge

Debra M. Brown

Debra M. Brown, United States District Judge

Neal Biggers

Neal Biggers, Senior United States District Judge

Glen H. Davidson

Glen H. Davidson, Senior United States District Judge