

UNITED STATES DISTRICT COURT



FOR THE DISTRICT OF MAINE

SPEEDY TRIAL PLAN

Pursuant to the requirements of Fed. R. Crim. P. 50, the Speedy Trial Act of 1974, 18 U.S.C. § 3161 *et seq.*, the United States District Court for the District of Maine adopts the following plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.

1. Applicability

a. Offenses

The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by a United States Magistrate Judge, except for petty offenses as defined in 18 U.S.C. § 19. They are not applicable to proceedings under the Federal Juvenile Delinquency Act except as specifically provided.

b. Persons

The time limits are applicable to accused persons who have been arrested or served with a summons but not indicted, as well as those who have been indicted or informed against, 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 Fed. R. Crim. P. 50. The trial of those defendants in custody solely because they are awaiting trial or of high risk defendants as defined in Section 7 of this Plan shall be given preference over other criminal cases. 18 U.S.C. § 3164(a). The preference to be given criminal cases shall not be unduly prejudicial to civil litigation.

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 a federal offense to be prosecuted in this court, any indictment or information subsequently filed in connection with such charges shall be filed within 30 days of the date of the arrest or the service of summons.

b. Grand Jury Not in Session

If a 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

- 1) If a person has not been arrested or served with a summons on a federal charge, an arrest on a federal charge will be deemed to have been made at the earliest of 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 response to a federal charge.
- 2) At the time of the earliest appearance before a federal 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.
- 3) In the absence of a showing to the contrary, a warrant or summons shall be considered to have been served on the date of service shown on the return thereof.

4. Pre-Indictment Rulings on Excludable Time and Continuances

- a. 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 of this Plan, the United States Attorney may file a written motion under 18 U.S.C. § 3161(h). The motion shall state (i) the period of time proposed for exclusion, (ii) the basis of the proposed exclusion, and (iii) 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*.

- b. 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 may 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 may require one or both parties to file periodic reports bearing on the continued existence of such circumstances.

5. Time Within Which Pretrial Motions Must be Filed

All pretrial motions and responses thereto shall be filed in accordance with the Procedural Order which the Court will issue at the arraignment.

6. 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 the 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 the plea, 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.

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 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 computation. 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.

- 3) 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.
- 4) If the subsequent charge is by 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 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 Fed. R. Crim. P.20, the indictment or information shall be deemed filed in this district when the papers in the proceeding are received electronically 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. Meeting the Scheduled Trial Date

1) In General

Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached on the date of original setting. A conflict in

schedules of trial counsel may be grounds for a continuance when a timely motion is filed with, and approved by, the court.

2) Transfer of Cases for Trial

If it appears that compliance with the time limit before the judge to whom the case is assigned will not otherwise be possible, that judge may make arrangement for transfer of the case to another member of the court for purposes of trial.

7. Defendants in Custody and High-Risk Defendants

a. Time Limits

The following time limits are applicable to defendants in custody as well as high-risk defendants, unless a different time period is allowed by Sections 3 or 6 of this Plan.

- 1) 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.
- 2) The trial of a released high-risk defendant shall commence within 90 days of the designation as high-risk.

b. Definition of “High-Risk Defendant”

A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself/herself or any other person or to the community. 18 U.S.C. § 3164.

c. Measurement of Time Periods

For the purposes of this section:

- 1) A defendant is deemed to be in detention awaiting trial when arrested on a federal charge or otherwise held for the purpose of responding to 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 Fed. R. Crim. P.20 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 6(e)(3) and 6(e)(4) of this Plan.
- 4) 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. App. 2 § 1 *et seq.*, may require that trial commence before the deadline established by the Speedy Trial Act.

d. Related Procedures

- 1) 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 such custody began.
- 2) The United States Attorney shall advise the court in writing at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered to be high-risk.
- 3) 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 defense counsel but shall not be made known to other persons without the permission of the court.

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 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 6(d) of this Plan, 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 light of all the circumstances.

9. Special Time Limits Applicable to 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(e).

10. Time Within Which Defendant Should be Sentenced

a. Time Limit

Sentencing shall ordinarily be held within 90 days of the date of conviction. Unless otherwise ordered by the Court, the probation office shall disclose the pre-sentence report (PSR) to both counsel and the defendant within 49 calendar days after the verdict of finding of guilt. Any objections to the information contained in the PSR shall be made within 14 days after receipt of the report. The final revised PSR shall be submitted to the sentencing judge within 14 days after receipt of any objections.

If the defendant and counsel, if any, consent thereto, a pre-sentence investigation may be commenced prior to a plea of guilty or *nolo contendere* or a conviction.

11. Exclusion of Time from Computations in General: Continuances

a. Applicability

In computing any time limit of Sections 3, 6, or 7 of this Plan, the periods of delay enumerated 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 8 of this Plan.

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.

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) The court will ordinarily approve stipulations regarding the accuracy of docket entries on the recording of excludable time so long as there is a basis in law or fact.
- 3) Any court approved stipulation shall apply to any non-severed defendant for the limited purpose of determining whether time has run under the Speedy Trial Act.

d. Continuances – Speedy Trial Orders

In those cases in which the defendant is represented by the office of the Federal Public Defender, the Public Defender shall prepare a proposed Speedy Trial order setting forth the 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, whenever it is determined that a continuance is justified under 18 U.S.C. § 3161(h)(8). In all other cases, the United States Attorney shall prepare the proposed order.

12. Monitoring Compliance With Time Limits

a. Responsibilities of the Clerk

The Clerk shall:

- 1) Maintain and compile such statistical data as required by statute and by the Administrative Office of the United States Courts.
- 2) Monitor, on a continuing basis, the progress of each defendant toward trial and review the status of each defendant so as to anticipate problems which may be developing and make recommendations to the court for reassignment of cases for trial.

b. Responsibility of the United States Marshal Concerning Defendants Subject to Removal

The Marshal shall promptly notify the Clerk of Court of the arrest of a defendant upon a warrant issued by another district.

13. 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).

14. Sanctions

a. Dismissal or Release from Custody

Failure to comply with the requirements of the Speedy Trial Act may result in the 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 beyond the circumstances set forth in §§ 3162 and 3164. The court retains the power to dismiss a case for unnecessary delay pursuant to F. R. Crim. P. 48(b) or pursuant to the Interstate Agreement on Detainers Act, 18 U.S.C. App. 2 § 1 *et seq.*

b. High-Risk Designated Releasee

A high-risk designated releasee whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) due to no fault of the attorney for the government shall have his or her release conditions automatically reviewed. A high-risk designated releasee who is found by the court to have intentionally delayed the trial of his or her case shall be subject to an order modifying the non-financial conditions of release to ensure that the releasee 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 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).

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 the case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or defense counsel, or would be in the interest of justice in the particular case.

For the Court:

/s/ Nancy Torresen
Chief District Judge

Dated in Portland, Maine, this 27th day of May, 2016

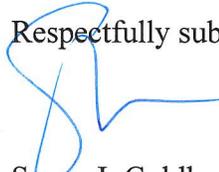
JUDICIAL COUNCIL OF THE

FIRST CIRCUIT

Entered: May 27, 2016

The First Circuit Judicial Council has voted to approve the United States District Court for the District of Maine Speedy Trial Plan, as amended.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'S. Goldberg', with a long horizontal flourish extending to the right.

Susan J. Goldberg
Circuit Executive