

# **SPEEDY TRIAL ACT PLAN**

## **EASTERN DISTRICT OF ARKANSAS**



**APRIL 17, 2008**

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## STATEMENT OF TIME LIMITS AND PROCEDURES FOR IMPLEMENTING THEM

Based on the requirements of the Speedy Trial Act of 1974,<sup>1</sup> the Speedy Trial Act Amendments Act of 1979,<sup>2</sup> the Federal Juvenile Delinquency Act,<sup>3</sup> and Rule 50 of the Federal Rules of Criminal Procedure, the judges of the United States District Court for the Eastern District of Arkansas (“EDAR”) have adopted the following time limits and procedures to minimize undue delay in the disposition of criminal cases and certain juvenile proceedings.<sup>4</sup>

### I. Applicability

- (A) Offenses. The time limits set forth in this plan are applicable to criminal offenses, except for petty offenses as defined in 18 U.S.C § 19 and Rule 58(a) of the Federal Rules of Criminal Procedure. Except as specifically provided, these time limits are not applicable to proceedings under the Federal Juvenile Delinquency Act.<sup>5</sup>
- (B) Time Computations. A time limit in this Plan which ends on a Saturday, Sunday, or legal holiday will be computed as provided for in Rule 45(a) of the Federal Rules of Criminal Procedure.

### II. Priorities in Scheduling Criminal Cases

- (A) Preference Generally. Preference will be given to criminal proceedings as far as practicable as required by Rule 50 of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974, and the Speedy Trial Act Amendments Act of 1979.
- (B) Preference as Between Criminal Defendants. The trial of defendants in custody solely awaiting trial<sup>6</sup> should be given preference over other criminal cases.<sup>7</sup>

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<sup>1</sup>18 U.S.C. § 3161, *et seq.*

<sup>2</sup>Pub. L. No. 96-43, 93 Stat. 327 (1974) (amended 1979).

<sup>3</sup>18 U.S.C. §§ 5036 and 5037.

<sup>4</sup>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, should be reviewed. See, *e.g.*, *United States v. Mauro*, 436 U.S. 340, 356-57 n.24 (1978).

<sup>5</sup>18 U.S.C. §§ 5031-5042.

<sup>6</sup>Following the lead of other districts in the 8th Circuit, the EDAR’s Plan omits references to “high risk” defendants. Although the Speedy Trial Act mentions “high risk” defendants (see, 18 U.S.C. § 3141) subsequent legislation, specifically the Bail Reform Act of 1984, 18 U.S.C. § 3141, *et. seq.* has alleviated the need to reference “high risk” defendants in this Plan.

<sup>7</sup>18 U.S.C. § 3164(a).

### **III. Time Within Which an Indictment or Information Must Be Filed**

- (A) Time Limits. An information or indictment charging an individual with a crime must be filed within thirty (30) days from the date on which the individual was arrested or served with a summons in connection with the charge.<sup>8</sup>
- (B) Grand Jury Not in Session. If an individual has been charged with a felony to be prosecuted in the EDAR, and no grand jury in the EDAR has been in session during the thirty (30) day period prescribed in subsection (A), the period will be extended an additional thirty (30) days.<sup>9</sup>
- (C) Measurement of Time Periods. If a person has not been arrested or served with a summons, an arrest will be deemed to have been made with respect to a federal charge in the EDAR at the time the person:
  - (1) is taken into custody solely for the purpose of responding to that charge;
  - (2) is delivered to the custody of a federal official in connection with that charge; or
  - (3) appears before a judge in connection with that charge.
- (D) Related Procedures.
  - (1) At the time of the earliest appearance before a judge of a person who has been arrested for an offense not charged in an indictment or information, the judge will establish the date on which the arrest took place.
  - (2) In the absence of a showing to the contrary, a summons is considered served on the date of service shown on the return of summons.

### **IV. Time Within Which Arraignment Must Be Held**

A defendant will be arraigned, before a judge, without unnecessary delay.<sup>10</sup>

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<sup>8</sup>18 U.S.C. § 3161(b).

<sup>9</sup>18 U.S.C. § 3161(b).

<sup>10</sup>FED. R. CRIM. P. 5(a)(1)(A).

## V. Time Within Which Trial Must Commence

- (A) Time Limits. The trial of a defendant charged in an information or indictment will commence not more than seventy (70) days after either:<sup>11</sup>
- (1) The date on which an indictment or information is filed and made public as to that defendant; or
  - (2) The date of the defendant's first appearance before a judge in the EDAR.<sup>12</sup>
- (B) Retrial; Trial After Reinstatement of an Information or Indictment.<sup>13</sup> If there has been a mistrial, or following any trial or appellate court order<sup>14</sup> directing a new trial, the retrial will commence within seventy (70) days from the date on which the order requiring the retrial becomes final. However, if retrial is the result of appeal or collateral attack, the period may be extended for not more than 180 days if unavailability of witnesses or other factors resulting from passage of time makes trial within seventy (70) days impractical.<sup>15</sup>
- (C) Withdrawal of Plea. If a defendant is permitted to withdraw a plea of guilty or *nolo contendere* to an indictment or information, the defendant will be deemed indicted and arraigned with respect to the entire indictment or information on the day the order permitting withdrawal of the plea becomes final.<sup>16</sup>
- (D) Transfers Under Rule 20. When there is a transfer to the EDAR under Rule 20 of the Federal Rules of Criminal Procedure, the 70-day time interval begins when the Clerk receives papers in the proceeding, or certified copies of them, from the original charging district.
- (E) Superseding and Subsequent Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed that 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:

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<sup>11</sup>Whichever occurs last.

<sup>12</sup>18 U.S.C. § 3161(c)(1).

<sup>13</sup>The periods of delay enumerated in § 3161(h) are excluded in computing the time limitations specified in this section. 18 U.S.C. § 3161(e).

<sup>14</sup>This time limit starts to run from the date the EDAR receives the mandate from the Eighth Court of Appeals. *U.S. v. Lightfoot*, 483 F.3d 876, 885 (8th Cir. 2007).

<sup>15</sup>18 U.S.C. §§ 3161(d)(2)-(e).

<sup>16</sup>18 U.S.C. § 3161(i).

- (1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit will be determined without regard to the existence of the original charge;<sup>17</sup>
- (2) If the original indictment or information is pending at the time the superceding charge is filed, the trial must commence within the time limit for commencement of trial on the original indictment or information;<sup>18</sup>
- (3) If the original indictment or information was dismissed on motion of the Government before the filing of the subsequent charge, the trial will commence within the time limit for commencement of trial on the original indictment or information; but the period<sup>19</sup> during which the defendant was not under charges will be excluded from the computations;<sup>20</sup>
- (4) If the complaint, indictment, or information is filed against a defendant charged in a pending indictment or information, or charged in an indictment or information dismissed on motion of the Government, 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;
- (5) At the time of the filing of a complaint, indictment, or information described in paragraph (4), the Government must give written notice to the Court of the circumstance and of its position with respect to the computation of time limits.

(F) Measurement of Time Periods.

- (1) A trial in a jury case commences at the beginning of *voir dire*.<sup>21</sup>
- (2) A trial in a non-jury case commences on the day the case is called, provided that some step in the trial immediately follows.

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<sup>17</sup>18 U.S.C. § 3161(d)(1).

<sup>18</sup>18 U.S.C. § 3161(h)(5).

<sup>19</sup>Such period is the period between the dismissal of the original indictment or information, and the date on which the time would have commenced to run on the subsequent charge had there been no previous charge.

<sup>20</sup>18 U.S.C. § 3161(h)(5).

<sup>21</sup>*U.S. v. Jones*, 23 F.3d 1307 (8th Cir. 1994) (citing cases).

## VI. Defendants in Custody

- (A) Time Limits. In accordance with 18 U.S.C. § 3164(b), and excluding the periods of delay enumerated in § 3161(h), the trial of a defendant held in custody solely for the purpose of trial on a federal charge will commence within ninety (90) days following the beginning of continuous custody on the federal charges pending in the EDAR.<sup>22</sup>
- (B) Measurement of Time Periods. When a defendant is apprehended outside EDAR and held in custody, his or her custody for the sole purpose of trial will be deemed to begin:
  - (1) When 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) When a case from the EDAR is transferred under Rule 20 and the defendant subsequently rejects disposition under Rule 20 or the transferee court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.
- (C) Related Procedures. If a defendant is being held in custody solely for the purpose of awaiting trial, the Government will advise the Court, at the earliest practicable time, of the date defendant was taken into custody.

## VII. Exclusion of Time from Computation

- (A) Excludable Delay. In computing time limits under this plan, the periods of delay in 18 U.S.C. § 3161(h) will be excluded.
- (B) Psychiatric or Psychological Examination. Delay in excess of ten (10) days, resulting from transportation of a defendant to and from places for examination, will be presumed unreasonable.<sup>23</sup>
- (C) Continuances. Parties filing a motion seeking a continuance and exclusion under 18 U.S.C. § 3161(h)(7) must include information sufficient to justify and support a finding that the ends of justice served by the continuance and exclusion outweighs the best interest of the public and the defendant in a speedy trial. Orders granting a delay and exclusion under 18 U.S.C. § 3161(h)(7) will include a finding that the ends of justice served by the continuance and exclusion outweigh the best interest of the public and the defendant in a speedy trial and the reasons for such finding.

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<sup>22</sup>18 U.S.C. § 3164(b).

<sup>23</sup>18 U.S.C. § 3161(h)(1)(F).

- (D) Records of Excludable Time. The Clerk of the Court will 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 defendant. This information will be available for Clerk's Office and Court use only. The parties remain responsible for making their own Speedy Trial Act calculations.
- (E) Pre-Indictment Procedures.
- (1) Except for time excludable under 18 U.S.C. § 3161(h)(7), the Court will not rule on the excludability of time in computing the time within which an indictment or information must be filed.
  - (2) If the Government seeks a continuance under 18 U.S.C. § 3161(h)(7), it will file a written motion with the Court. The motion will state (i) whether or not the defendant is being held in custody on the basis of the complaint; (ii) the period of time proposed for exclusion; and (iii) the basis for the proposed exclusion. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered *ex parte* and *in camera*.
- (F) Post-Indictment Procedures.
- (1) If the Court continues an arraignment or trial beyond the time limit set forth in section IV or V or to an uncertain date that may be beyond such limit, the Court will determine whether the limit may be recomputed by excluding time under 18 U.S.C. § 3161(h).
  - (2) 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 file periodic reports bearing on the continued existence of such circumstances. The Court will determine the frequency of such reports in the light of the facts of the particular case. The Court must then make findings that those delays served the interest of justice.

### **VIII. Minimum Period for Defense Preparation**

Unless the defendant consents in writing to the contrary, the trial will not commence earlier than thirty (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*.<sup>24</sup>

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<sup>24</sup>18 U.S.C. § 3161(c)(2).



## **IX. Juvenile Proceedings**

- (A) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial will be brought to trial within thirty (30) days from the date on which such detention was begun.<sup>25</sup>
- (B) Time for Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate disposition hearing will be held no later than twenty (20) court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(d).<sup>26</sup>

## **X. Persons Serving Terms of Imprisonment**

If the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, the Government must 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).

## **XI. Sanctions**

Failure to comply with the requirements of the Speedy Trial Act, 18 U.S.C. § 3161, may entitle the defendant to dismissal of the charges, as well as the other sanctions provided for in 18 U.S.C. § 3162.

## **XII. Statistical Reporting**

Information and statistics concerning the administration of criminal justice in the EDAR can be captured by using the reporting function of the EDAR's Case Management/Electronic Case Filing system. The Clerk of the Court will provide upon request and with the approval of the Court statistics concerning the administration of criminal justice as set forth in 18 U.S.C. § 3166(c) that are available through this system.

## **XIII. Effective Date**

The revisions of the Eastern District of Arkansas's Plan was approved by the Court this 30th day June, 2011, and will become effective upon the approval of the reviewing panel in accordance with 18 U.S.C. § 3165(d).

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<sup>25</sup>See 18 U.S.C. § 5036.

<sup>26</sup>18 U.S.C. § 5037(a).