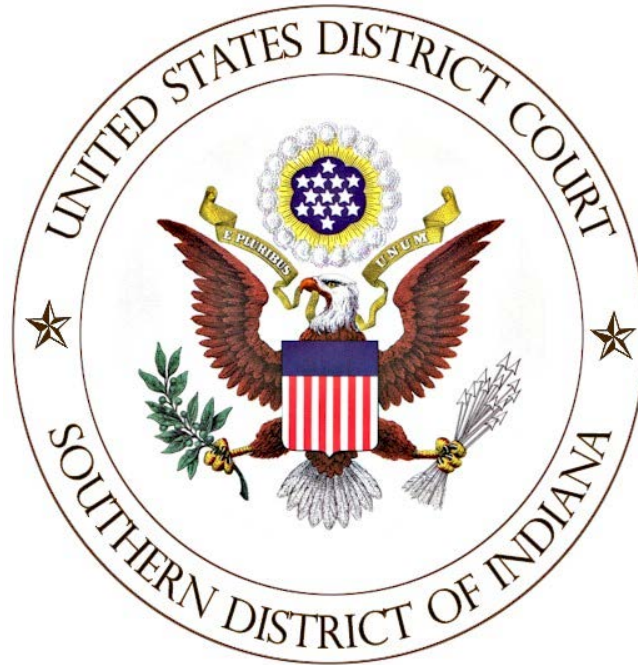


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**



**PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES
(SPEEDY TRIAL ACT PLAN)**

AUGUST 2013

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
(Speedy Trial Act Plan)**

Pursuant to the requirements of Rule 50 of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq., Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub. L. 96-43, 93 Stat. 327), the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036 and 5037), and the Bail Reform Act of 1984 (18 U.S.C. §§ 3141-3156), the Judges of the United States District Court for the Southern District of Indiana 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 shall take effect upon approval of the Judicial Council of the Seventh Circuit.

A. Applicability

1. Offenses. The time limits set forth herein are applicable 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. § 1 (3). Except as specifically provided, the time limits are not applicable to proceedings under the Federal Juvenile Delinquency Act. (18 U.S.C. § 3172).
2. Persons. The time limits are applicable to persons accused who have been arrested or served with a summons but not indicted or informed against as well as those who have; and the word "defendant" includes such persons unless the context indicates otherwise.

B. 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 or she 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)).

C. Time Limit Within Which an Indictment of Information Must Be Filed

1. Time Limits. Any information or indictment charging an individual with the commission of an offense to be prosecuted in this district shall be filed within 30 days from the date on which such individual was arrested or served with a summons in connection with such charges. (18 U.S.C. § 3161(b)).

2. Grand Jury Not in Session. If an individual 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 paragraph C.1. above, the period of time for filing of the indictment shall be extended an additional 30 days. (18 U.S.C. § 3161(b)).

3. Measurement of Time Periods. If a person has not been arrested or served with a summons on a federal charge, an arrest shall be deemed to have been made at the earliest of such times as the person:

- (a) is held in custody solely for the purpose of responding to a federal charge;
- (b) is delivered to the custody of a federal official in connection with a federal charge; or
- (c) appears before a judicial officer in connection with a federal charge.

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 shall establish for the record the date on which the arrest took place.

(b) In the absence of a showing to the contrary, a summons shall be deemed to have been served on the date of service shown on the return thereof.

D. Time Within Which Trial Must Commence

1. Time Limits – General. 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)).

2. Superseding Charges. If, after an indictment or information has been filed against a defendant, another complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with the offense initially charged, the time limit applicable to the subsequent charge shall be determined as follows:

- (a) 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.

(b) If the original indictment or information was dismissed on motion of the attorney for the Government 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)(5)).

(c) If the original indictment or information remains 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.

(d) If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information shall 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.

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 subsequently 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 the plea became final. (18 U.S.C. § 3161(i)).

4. Charges Reinstated Following Appeal. If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within 70 days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed 180 days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within 70 days impractical. (18 U.S.C. § 3161(d)(2)).

5. Charges Reinstated Following Mistrial or Order for Retrial. 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 within 70 days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within 70 days from the date the action occasioning the retrial becomes final, except that the court retrying the case 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 passage of time shall make trial within 70 days impractical. (18 U.S.C. § 3161(e)).

6. Measurement of Time Periods. For purposes of this section:

- (a) If a defendant signs a written consent to be tried before a magistrate judge on a complaint and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.
- (b) 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 of the court.
- (c) A trial in a jury case shall be deemed to commence at the beginning of *voir dire*.
- (d) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some substantial step in the trial procedure immediately follows.

7. Related Procedures.

- (a) At the time of a defendant's earliest appearance before a judicial officer of this district, the officer shall take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel when appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.
- (b) The court has sole responsibility for setting cases for trial after consultation with counsel for the defendant and the attorney for the Government. At the earliest practicable time, each case shall be set for trial on a day certain or listed for trial on a weekly or other short-term trial calendar at a place within the judicial district. (18 U.S.C. § 3161(a)).
- (c) A conflict in schedules of the attorney for the Government or defense counsel shall be grounds for a continuance or delay in the setting of a trial date only if approved by the court after being called to its attention at the earliest practicable time. To the extent practicable, the attorney for the Government shall assign or reassign cases in such manner that the Government shall be prepared to try cases on the date set pursuant to subparagraph (b) of this section.
- (d) At or promptly after the time of the filing of a complaint, indictment, or information such as described in above subparagraphs D.2(b) or (c), the attorney for the Government shall inform the court of that circumstance and his or her position with respect to the computation of the time limits.

(e) 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.

E. Persons Detained or Designated as Being of High Risk

1. Time Limits. Notwithstanding any longer time periods that may be permitted under sections C and D above, the trial or other disposition of cases involving:

(a) a detained person who is being held in detention solely because he or she is awaiting trial, and

(b) 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 custody or designation of high risk by the attorney for the Government. (18 U.S.C. § 3164(b)).

2. Measurement of Time Periods. For purposes of this section:

(a) A defendant is deemed to be in detention awaiting trial when he or she is arrested on 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 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 shall begin at that time.

(c) A trial shall be deemed to commence as provided in subparagraphs D.6(c) and (d).

3. Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the attorney for the Government shall advise the court at the earliest practicable time of the date of the beginning of such custody.

(b) The attorney for the Government 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.

(c) 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.

F. Minimum Period for Defense Preparation

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)).

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 subsection D.2, 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 shall not begin to run. In all such cases the court will schedule trials so as to permit defense counsel adequate preparation time in the light of all circumstances.

G. Exclusion of Time from Computations

1. Applicability. In computing any time limit under sections C, D, and E above, 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 F above.

2. Basis for Excludable Time. At the time it orders time excluded from the computation of any time limit under 18 U.S.C. § 3161, the court shall set forth on the record, in writing or orally, the basis for the finding of excludable time. The clerk of court shall enter on the docket information with respect to excludable period(s) of time for each criminal defendant.

3. Stipulations.

(a) The attorney for the Government and the attorney for the defendant may at any time enter into stipulations with respect to excludable time and submit the same to the court for its review and approval.

(b) Once accepted by the court, a stipulation with respect to excludable time shall be conclusive as between the parties unless it has no basis in fact or law. To the extent consistent with 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.

4. Pre-Indictment Procedures.

(a) In the event that the attorney for the Government anticipates that an indictment or information will not be filed within the time limit set forth in Section C of this Plan, the attorney for the Government shall file a written motion with the court for a determination of excludable time. In the event that the attorney for the Government seeks a continuance under 18 U.S.C. § 3161(h)(7), the attorney for the Government shall file a written motion with the court requesting such a continuance.

(b) The motion of the attorney for the Government seeking a determination of excludable time or continuance under subparagraph (a) above shall state:

- (1) the period of time proposed for exclusion; and
- (2) the basis of the proposed exclusion.

If the motion is for a continuance under 18 U.S.C. § 3161(h)(7), 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*.

(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 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 light of the facts of the particular case.

5. Post-Indictment Procedures.

(a) In the event that the court extends the time for a trial beyond the time limit set forth in sections D, E, and E above, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).

(b) If the court finds that an extension of the time for trial beyond the time limits set forth in paragraphs D, E, and E is justified, the court shall state for the record, either orally or in writing, the fact or facts on which such determination is made. If the extension 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 and to file periodic reports bearing on the continued existence of such circumstances. The

court shall determine the required frequency of such reports in light of all the relevant circumstances.

H. Time Limits Within Which Defendants Should Be Sentenced

1. Time Limit. A defendant shall ordinarily be sentenced within 90 days of conviction.
2. Related Procedures. For good cause, the court may order a presentence investigation commenced prior to a plea of guilty or *nolo contendere* or conviction.

I. Special Time Limitations 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, unless the Attorney General 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. Delays attributable solely to court calendar congestion may not be considered in the interest of justice (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(a) and (e). [Note: subsection (a) erroneously refers to (d) instead of (e) due to an amendment to 18 U.S.C. § 5037 that did not correct cross-references.]

J. Sanctions

(a) Dismissal or Release From Custody. 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 or release from pretrial custody. However, 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 or 18 U.S.C. § 3164.¹

(b) 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 Attorney General shows that additional delay was caused by the juvenile or

¹ Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix.

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).

(c) High Risk Defendants. With regard to a detainee detained or designated as of high risk whose trial has not commenced within the time limits set forth in 18 U.S.C. § 3164(b), failure to commence the trial of the detainee, through no fault of the accused or his counsel, or failure to commence trial of a designated releasee, through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release.

A designated releasee, as specified in 18 U.S.C. § 3164(a), who is found by the court to have intentionally delayed the trial of his or her case shall be subject to an order of the court modifying his or her nonfinancial conditions of release to ensure that he or she shall appear at trial as required. 18 U.S.C. § 3164(c).

(c) 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 or she knows is totally frivolous and without merit;
- (iii) 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 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).

K. Persons Serving Terms of Imprisonment

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

L. Monitoring Compliance with Time Limits

(a) Responsibilities of Clerk. The clerk shall maintain and compile such statistical data as is required to be maintained by statute or the Administrative Office of the United States Courts and make the same available to the judicial officers of this district.

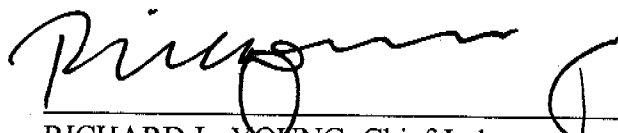
(b) Responsibilities of United States Marshal. The United States Marshal shall, every two weeks, furnish the attorney for the Government with a statement of persons in federal custody and the date of such custody according to his records.

M. Conflict of Law

In the event of conflict between the provisions of this Plan and any provisions contained in the United States Code, the Federal Rules of Criminal Procedure, or applicable Federal Regulations, the provisions contained in the United States Code, Federal Rules of Criminal Procedure, or Federal Regulations shall superseded this Plan.

This Plan, as adopted this 3RD day of SEPTEMBER, 2013, supersedes any and all Plans heretofore adopted and shall constitute the rule of this court.

FOR THE COURT,



RICHARD L. YOUNG, Chief Judge
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT this 27th
day of September, 2013.

Collins T. Fitzpatrick
By: Collins T. Fitzpatrick, Circuit Executive
Seventh Circuit