

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**PUBLIC NOTICE**

**REGARDING MODIFICATIONS TO THE  
PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES**

By public notice dated June 30, 2008, this Court provided notice and solicited comment regarding certain modifications to the court's *Plan for the Prompt Disposition of Criminal Cases* (the Plan). After review, the Judges of the United States District Court for the District of Massachusetts approved modifications to the Court's *Plan for the Prompt Disposition of Criminal Cases* based upon comments received and subsequent consideration, in the form attached hereto effective as of December 9, 2008. Further, pursuant to 18 U.S.C. §3165(d), the Plan was approved by the First Circuit Judicial Council on December 9, 2008.

The modifications to the Plan are made to: eliminate sections no longer applicable; add statutory references; update rule references; allow additional time for a defendant to consult with or retain counsel; and correct or clarify information.

January 9, 2009

*Sarah Allison Thornton*  
Clerk of Court

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**PLAN FOR PROMPT DISPOSITION  
OF  
CRIMINAL CASES**



December 2008

# CONTENTS

<b>1. APPLICABILITY</b>	<u>1</u>
(a) OFFENSES	<u>1</u>
(b) PERSONS	<u>1</u>
<b>2. PRIORITIES IN SCHEDULING CRIMINAL CASES</b>	<u>1</u>
<b>3. TIME WITHIN WHICH AN INDICTMENT OR INFORMATION MUST BE FILED</b>	<u>2</u>
(a) TIME LIMITS	<u>2</u>
(b) ATTACHMENT OF TIME LIMITS	<u>2</u>
(c) RELATED PROCEDURES	<u>2</u>
<b>4. TIME WITHIN WHICH TRIAL MUST COMMENCE</b>	<u>3</u>
(a) TIME LIMITS	<u>3</u>
(1) ORIGINAL TRIALS	<u>3</u>
(2) RETRIALS	<u>4</u>
(b) DEFENDANTS IN CUSTODY AND HIGH-RISK DEFENDANTS	<u>5</u>
(1) DEFINITIONS	<u>5</u>
(2) TIME LIMITS	<u>5</u>
(c) SUPERSEDING CHARGES	<u>6</u>
(d) RELATED PROCEDURES	<u>7</u>
<b>5. EXCLUSIONS OF TIME FROM COMPUTATIONS</b>	<u>10</u>
(a) APPLICABILITY	<u>10</u>
(b) EXCLUDABLE PERIODS	<u>10</u>
(c) CONTINUANCES	<u>22</u>
(1) PRE-INDICTMENT	<u>22</u>
(2) POST-INDICTMENT	<u>23</u>
(3) CONDITIONS ON CONTINUANCE	<u>23</u>
(d) COMPUTATION OF TIME LIMITS	<u>23</u>
(e) RECORD KEEPING	<u>23</u>
(f) ESTABLISHING EXCLUDABLE PERIODS	<u>24</u>
(1) DELAY RECORDED BY MAGISTRATE JUDGE	<u>24</u>
(2) DELAY RECORDED BY COURTROOM DEPUTY	<u>24</u>
(3) DELAY RECORDED BY JUDGE ACTING <i>SUA SPONTE</i>	<u>25</u>
(4) DELAY RECORDED PURSUANT TO MOTION OF PARTIES	<u>25</u>
(5) STIPULATION BY THE PARTIES	<u>26</u>
(6) OBJECTIONS: WAIVER OF OBJECTIONS	<u>27</u>
(7) TIME: COMPUTATION	<u>27</u>

<b>6. JUVENILE PROCEEDINGS.....</b>	<b><u>28</u></b>
(a) TIME WITHIN WHICH TRIAL MUST COMMENCE.....	<u>28</u>
(b) TIME OF DISPOSITIONAL HEARING.....	<u>28</u>
(c) SANCTIONS.....	<u>28</u>
<b>7. EFFECT OF NONCOMPLIANCE WITH TIME LIMITS.....</b>	<b><u>28</u></b>
(a) DISMISSAL.....	<u>28</u>
(b) DEFENDANT RESPONSIBLE FOR NONCOMPLIANCE.....	<u>28</u>
(c) ATTORNEY MISCONDUCT..	<u>29</u>
<b>8. PERSONS SERVING TERMS OF IMPRISONMENT .....</b>	<b><u>29</u></b>
<b>9. MONITORING COMPLIANCE WITH TIME LIMITS.....</b>	<b><u>29</u></b>
<b>10. EFFECTIVE DATE.....</b>	<b><u>30</u></b>

Pursuant to the requirements of the Federal Speedy Trial Act of 1974 (18 U.S. C. §§ 3161-3174), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43), the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), and the Local Rules concerning criminal cases (LR 112.1 et seq.) the judges of the United States District Court for the District of Massachusetts 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.** The time limits set forth herein apply to any criminal offense triable in this court, including any offense triable by a United States magistrate judge, except for petty offenses as defined in 18 U.S. C. § 19. Except as specifically provided herein, the following time limits are not applicable to juvenile delinquency proceedings under 18 U.S.C. § 5031-42.

(b) **PERSONS.** The time limits set forth herein are applicable to any person accused who has not been indicted or informed against as well as any person who has. The word “person” shall include any natural person, corporation, or unincorporated association; the word “defendant” shall include any person so defined unless a contrary intent clearly appears from the context.

## **2. 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 in which the defendant is detained solely because the defendant is awaiting trial or a released person awaiting trial who has been designated by the

United States Attorney as being of high risk shall be accorded priority. (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 a person 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 thirty days after the arrest or service of summons. (18 U.S.C. §3161(b))

(b) ATTACHMENT OF TIME LIMITS. If a person has not been arrested or served with a summons on an outstanding federal charge, an arrest shall be deemed to have been made when that person (i) is first held in custody in this district solely for the purpose of responding to that federal charge; (ii) is delivered to the custody of a federal official in this district in connection with that federal charge; or (iii) first appears before a judicial officer of this district in connection with that federal charge.

(c) RELATED PROCEDURES. At the time of the earliest appearance before a judicial officer of a person who has been arrested for or served with a summons in connection with an offense not charged in an indictment or information, that judicial officer shall establish for the record the date on which the arrest took place or on which the summons was served.

#### **4. TIME WITHIN WHICH TRIAL MUST COMMENCE**

(a) TIME LIMITS.

(1) ORIGINAL TRIALS.

(A) The trial of a defendant who is not in custody solely awaiting trial or who has not been designated as high risk shall, subject to the periods of excludable delay enumerated in subsection 5 (b), commence within seventy days after the date of the last to occur of the following events: (i) the filing of an indictment or information in this district; (ii) the making public of a sealed indictment or information; or (iii) the defendant's first appearance before a judicial officer of this district. (18 U.S.C. § 3161(c)(1))

(B) If a defendant consents in writing to be tried before a magistrate judge on a complaint charging a misdemeanor, the trial shall commence within seventy days after the date of that consent. (18 U.S.C. § 3161(c)(1))

(C) If a defendant is to be tried upon an indictment or information which was reinstated following an appeal after dismissal by the district court, the trial shall commence within seventy days after the date the action occasioning the trial becomes final, subject to the period of excludable delay enumerated in subsection 5 (b), except that the court retrying the case may enlarge the period for trial if absence or unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days

impractical, but such enlargement shall not extend more than one hundred eighty days after the date upon which the action occasioning the trial becomes final. (18 U.S.C. § 3161(d)(2))

(D) Without the written consent of the defendant no trial shall commence less than thirty days after the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se, or if trial is to be by a magistrate judge, within thirty days after the defendant consents thereto. (18 U.S.C. § 3161(c)(2))

(2) RETRIALS.

(A) If a defendant is to be tried again following the declaration by a trial judge of a mistrial or following the order of a trial judge for a new trial, the trial shall commence within seventy days after the date the declaration or order becomes final, subject to the periods of excludable delay enumerated in subsection 5 (b). (18 U.S.C. § 3161(e))

(B) If a defendant is to be tried again following an appeal or collateral attack, the trial shall commence within seventy days after the date the action occasioning the retrial becomes final, subject to the periods of excludable delay enumerated in subsection 5 (b), except that the court retrying the case may enlarge the period for retrial if absence or unavailability of witnesses or other factors resulting from the passage of time shall make retrial within seventy days impractical, but such enlargement shall not extend more than



one hundred eighty days after the date upon which the action occasioning the retrial becomes final.

(b) DEFENDANTS IN CUSTODY AND HIGH-RISK DEFENDANTS.

(1) DEFINITIONS. As used in this subsection, the following terms shall have the following meanings:

(A) “Defendant in custody” shall mean a person being held in detention for the sole purpose of awaiting trial on the federal charge contained in the pertinent complaint, information or indictment. (18 U.S.C. § 3161(a)(1))

(B) “High-risk defendant” shall mean a person who is awaiting trial on the federal charge contained in the pertinent complaint, information or indictment, but who is not in custody and has been designated by the United States Attorney as being of high risk. (18 U.S.C. § 3164(a)(2))

(2) TIME LIMITS. The following time limits, as extended by the periods of excludable delay enumerated in subsection 5(b), apply to defendants in custody and defendants designated as high-risk:

(A) The trial of a defendant in custody shall commence within ninety days after the beginning of continuous detention for the sole purpose of awaiting trial. (18 U.S.C. § 3164(b))

(B) The trial of a high-risk defendant shall commence within ninety days after he is designated as high-risk. (18 U.S.C. § 3164(b))

(c) SUPERSEDING CHARGES. If after an indictment or information has been filed, a subsequent complaint, indictment or information is filed which charges the defendant with the same offense or an offense required to be joined with that offense, the time limits applicable to the subsequent charge shall be determined as follows:

(1) In the case of a subsequent complaint, the time limit within which an indictment or information shall be obtained upon a subsequent charge shall be computed without regard to the existence of the original indictment or information. (18 U.S.C. § 3161(d)(1))

(2) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit for commencement of trial on subsequent charge shall be computed without regard to the existence of the original charge. (18 U.S.C. § 3161(d)(1))

(3) If the original indictment or information is pending at the time the subsequent charge is filed, the time limit for commencement of trial on the subsequent charge shall be the time limit for commencement of trial on the original indictment or information.

(4) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the time limit for commencement of trial on the subsequent charge

shall be the time limit for commencement of trial on the original indictment or information, as extended by a period equal to that during which charges were not outstanding. (18 U.S.C. § 3161(h)(6))

(5) The provisions of this subsection 4 (c) shall apply to any criminal case in which the JS 45 Form for the District of Massachusetts (Criminal Case Cover Sheet adapted for use in the District of Massachusetts) indicates that the case is related to a pending indictment or information unless on motion of the United States Attorney the court finds that the subsequent indictment or information is not, by double jeopardy standards, for the same offense or is not, pursuant to the Federal Rules of Criminal Procedure, required to be prosecuted in a single proceeding.

(d) RELATED PROCEDURES

(1) At the time of a defendant's earliest appearance before a judicial officer of this district, that officer shall take appropriate steps to ascertain whether the defendant is represented by counsel and shall, when appropriate, appoint counsel pursuant to the Criminal Justice Act of 1964 (18 U.S.C. § 3006A), Rule 44 of the Federal Rules of Criminal Procedure and the Local Plan for the Administration of the Criminal Justice Act (CJA Plan). If a defendant appears for arraignment without counsel, his/her arraignment may be continued for not more than one week to permit him to consult with his/her chosen counsel. No additional delay of the arraignment may be permitted on the ground that the defendant's chosen counsel is unavailable. The judicial officer may continue an arraignment to enable a defendant to obtain counsel, and the period of the continuance may be excluded if the

judicial officer makes the findings required by 18 U.S.C. § 3161(h)(8). When appropriate a judicial officer may cause a plea of not guilty to be entered on behalf of the defendant.

(2) An arraignment shall be deemed to take place at the time a plea is taken or is entered by a judicial officer on behalf of the defendant.

(3) 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 becomes final. (18 U.S.C. § 3161(i))

(4) In the event of a transfer to this district under Rule 20 or Rule 21 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.

(5) The court shall have sole responsibility for setting cases for trial in the manner provided by Local Rule 117.1. After receiving the Magistrate Judge's Final Status Report, and at least thirty (30) days before trial, or at the earliest practicable shorter time before trial consistent with the Speedy Trial Act, the judge who will preside at trial must conduct an Initial Pretrial Conference, at which a reliable trial date will be established.

(6) Each judge shall schedule criminal trials at such times as are necessary to assure prompt disposition of criminal cases. Individual calendars shall be managed so that it can be reasonably anticipated that every

criminal case set for trial will be reached during the week for which it was originally set. A continuance shall be granted only as provided by 18 U.S.C. § 3161 (h) and this plan. A conflict in schedules of Assistant United States Attorneys shall not be grounds for a delayed setting or for a continuance of the date set, unless the requirements of Local Rule 40.2 concerning conflicts of court appearances have been met.

(7) All status conferences and pretrial hearings shall be conducted in a timely manner consistent with Local Rule 116.5 and 117.1 and with the priorities of other matters on the criminal docket.

(8) For the purpose of this section: (A) a trial in a jury case shall be deemed to have commenced at the beginning of voir dire; (B) a trial in a non-jury case shall be deemed to have commenced on the day the case is called, provided that some step in the trial procedure immediately followed.

(9) If a defendant is being held in custody for the sole 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 continuous custody.

(10) If the clerk has been advised that a defendant is in custody for the sole purpose of awaiting trial and that the defendant is thereafter released from custody before the commencement of trial, the United States Attorney shall notify the clerk of the change in status.

(11) If a defendant is determined by the United States Attorney to be a high-risk, the United States Attorney shall advise the court and shall notify the defendant and his/her counsel at the earliest practicable time of that

designation. The designation shall be made known to the defendant and his/her counsel, but shall not be made known to other persons without the permission of the court.

## **5. EXCLUSIONS OF TIME FROM COMPUTATIONS**

(a) **APPLICABILITY.** Excludable periods of delay, as defined in subsection 5 (b), shall toll the time limits within which an indictment or information must be filed (Section 3), and within which trial must commence (Section 4). (18 U.S.C. § 3161(h))

No excludable period which is based solely upon the consent of the parties may be allowed.

### **(b) EXCLUDABLE PERIODS.**

(1) Any period of delay resulting from other proceedings concerning the defendant, including, but not limited to:

(A) Delay resulting from any proceeding to determine the mental competency or physical capacity of the defendant, including any examination or hearing. (18 U.S.C. § 3161(h)(1)(A))

(i) The excludable period shall commence on the date upon which any proceeding in the above paragraph is initiated by written or oral motion and shall conclude on the date the court has received the report of examination, all briefs have been filed and any necessary hearing has been completed. In the case of an examination under Fed.R.Crim.P. 12.2(c), if there is no question before the court

for ruling, the excludable period shall conclude on the date on which the report of the examination is received by the attorney for the Government.

(ii) Upon the arrival of the defendant at the place of examination, the examiner shall notify the clerk of this court of the date of that arrival and the date on which the examination is to begin and shall estimate the length of the examination. The examiner shall further notify the clerk of the date on which the examination is concluded and of the date on which the defendant is discharged.

(iii) If a defendant is in federal custody, the U.S. Marshal shall notify the clerk of this court of the transfer of the defendant to the custody of the examiner and of the examiner's return of the defendant to the custody of the U.S. Marshal.

(B) Delay resulting from trial of the defendant on other charges in any state or federal court, including this court. (18 U.S.C. § 3161(h)(1)(D))

(i) The excludable period shall commence on the date that such other trial begins and shall conclude fourteen days after the termination of that trial.

(ii) As used in this subparagraph, "trial" shall be deemed to include the impanelling of the jury, a hearing on

any motion which has been deferred for hearing to the trial date and any time during which the trial is suspended.

(C) Delay resulting from an interlocutory appeal in the case.

(i) The excludable period shall commence on the date the notice of appeal is filed. (18 U.S.C. § 3161(h)(1)(E))

(ii) The excludable period shall conclude on the date the mandate of the Court of Appeals is received by the clerk of this court.

(D) Delay resulting from the hearing and disposition of a pretrial motion. (18 U.S.C. § 3161(h)(1)(F))

(i) The excludable period shall commence on the date the court grants a period of time to file a pretrial motion or the date on which a pretrial motion is filed, whichever is earlier.

(ii) The excludable period shall conclude on the date on which the Court has received all forthcoming briefs from the parties and any necessary hearing on the motion has been concluded.

(E) Delay resulting from proceedings relating to transfer of cases among districts pursuant to the Federal Rules of Criminal Procedure. (18 U.S.C. § 3161(h)(1)(G))



(i) If a case is transferred back to this district for trial pursuant to Rule 20 (c) of the Federal Rules of Criminal Procedure, the time limits of this plan shall commence to run on the date on which the clerk of this court receives the papers in the proceeding from the clerk of the court to which the case was transferred originally.

(ii) If a defendant moves for transfer of a case from this district to another district for trial pursuant to Rule 21 of the Federal Rules of Criminal Procedure, an excludable period shall commence on the date on which the motion is filed and conclude on the last day of any hearing on the motion or a decision on the motion, whichever is sooner. If the court takes the matter under advisement the excludable period shall be determined pursuant to Section H infra. The excludable period shall conclude on the date of decision of that motion if it is denied or, if the motion is allowed and the case is transferred, the concluding date shall be determined by the district court to which the case is transferred.

(iii) If on motion of a defendant pursuant to Rule 21 of Federal Rules of Criminal Procedure a case is ordered transferred to this district an excludable period shall commence on the date of the first day of the hearing on that motion in that other district and shall conclude on the date on which the defendant first arrives in this district in custody or the date on which the clerk receives the papers in the case,

whichever is later.

(iv) If a defendant is removed to this district pursuant to Rule 5(c) of the Federal Rules of Criminal Procedure, the excluded period shall commence on the date of the arrest in another district on charges pending or for a crime committed in this district and shall conclude on the date of the arrival of the defendant in this district if in custody or the date of the first appearance of the defendant before a judicial officer in this district if not in custody.

(F) A reasonable period of delay resulting from transportation of the defendant from another district or to and from places of examination or hospitalization. (18 U.S.C. § 3161(h)(1)(H))

(i) The excluded period shall commence upon the date the order of removal or order directing transportation of the defendant is entered.

(ii) The excluded period shall conclude on the date of the arrival of the defendant in this district pursuant to an order of removal or at the destination stated in an order directing transportation.

(iii) Any time consumed by the transportation in excess of ten days shall be presumed to be unreasonable.

(G) Delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the

attorney for the government pursuant to Rule 11 (e) of the Federal Rules of Criminal Procedure. (18 U.S.C. § 3161(h)(1)(I))

(i) The excluded period shall commence on the date of disclosure of the plea agreement to the appropriate judicial officer.

(ii) The excluded period shall conclude on the date the court's decision on the plea agreement is filed or announced in open court.

(H) Delay resulting from proceedings concerning the defendant being under advisement. (18 U.S.C. § 3161(h)(1)(J))

(i) The excludable period shall commence on the date on which any proceeding concerning the defendant is actually taken under advisement.

(ii) The excludable period shall conclude on the date on which an order or ruling on the matter is entered, but in no event shall the excludable period exceed thirty days.

(2) Any period of delay after the filing of an indictment or information during which prosecution is deferred by the United States Attorney, pursuant to a written agreement with the defendant which is approved by the court, for the purpose of allowing the defendant to demonstrate his/her good conduct. (18 U.S.C. § 3161(h)(2))

(A) The excluded period shall commence on the date on which the court approves the agreement for deferral of prosecution.

(B) The excluded period shall conclude on the date on which the United States Attorney resumes prosecution.

(3) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness. (18 U.S.C. § 3161(h)(3))

(A) The excludable period shall commence on the date on which a motion for a continuance of the proceedings is allowed or on such other date as the court may determine.

(B) The excludable period shall conclude on the date on which the court is notified that the defendant or essential witness is available to appear in the proceedings.

(C) If the court finds that the defendant or essential witness was reasonably available on a date earlier than that of which it was notified, the court may order that the excludable period be deemed to have concluded on that earlier date.

(D) For purposes of this paragraph:

(i) The term “essential witness” means a witness so necessary to the proceeding that continuing without that witness would be impossible or would be likely to result in a miscarriage of justice.

(ii) A defendant or an essential witness shall be considered “absent” when (1) his/her whereabouts are unknown and, in addition, (2) he is attempting to avoid apprehension or prosecution or (b) his/her whereabouts cannot be determined by due diligence. (18 U.S.C. § 3161(h)(3)(B))

(iii) A defendant or an essential witness shall be considered “unavailable” when his/her whereabouts are known, but (1) his/her presence at the proceedings cannot be obtained by due diligence or (2) he resists appearing at or being returned for the proceedings. (18 U.S.C. § 3161(h)(3)(B))

An essential witness shall not be considered “unavailable” when he is present at the proceedings or his/her presence could be obtained by due diligence and he is or would be unable to testify due to temporary incompetence or incapacity, but such a condition may be grounds for a continuance under subparagraph 6(b) (h)(8).

(E) The Government shall have the burden of going forward with the evidence in connection with any exclusion of time under this paragraph.

(4) A period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial. (18 U.S.C. §

3161(h)(4))

(A) The excludable period shall commence on the date on which the defendant is found mentally incompetent or physically unable to stand trial.

(B) The excludable period shall conclude on the date on which the defendant is found mentally competent or physically able to stand trial and the court allows prosecution to resume.

(5) A period of delay resulting from a dismissal of the charges upon motion of the attorney for the government and the subsequent filing of new charges for the same offense or for an offense required to be joined with that offense. (18 U.S.C. § 3161(h)(6))

(A) The excludable period shall commence on the date on which the court orders dismissal of an indictment or information upon motion of the attorney for the government.

(B) The excludable period shall conclude on the date on which new charges are filed for the offense charged in the original indictment or information or for an offense which is, pursuant to the Federal Rules of Criminal Procedure, required to be joined with that offense.

(C) This paragraph shall be governed by the provisions of subsection 5 (c) insofar as applicable.

(6) A period of delay resulting from the fact that the defendant is

joined for trial with a co-defendant as to whom the time for trial has not run and as to whom no motion for severance has been granted. (18 U.S.C. § 3161(h)(7))

(A) The excluded period shall commence on the date of the expiration of the time limit for trial as computed pursuant to section 5 and shall conclude on the date on which trial is commenced, or on which the time limits for trial as to all co-defendants have expired, or on which motion for severance is granted.

(B) All defendants who are named in a single indictment or information should be tried at a single trial unless a motion for severance has been granted.

(C) The provisions of this paragraph shall not apply to a defendant who is in custody if a co-defendant as to whom the time limit for trial has not expired is not in custody.

(7) (A) A period of delay authorized by L.R. 112.2(A) which is set forth in an electronic or a separate order issued by a judicial officer. The order must specify the time period to be excluded and the subsection of L.R. 112.2(A) which is applicable.

(B) A period of delay resulting from a continuance, granted by a judge on his/her own motion or on the motion of any party, upon a finding that the ends of justice outweigh the best interests of the public and the defendant in a speedy trial. The excluded period shall commence on the date on which a continuance is granted or on such other date as the Court may determine and shall conclude on the date

to which proceedings are continued by the order of the Court or on which the proceedings are resumed, whichever is earlier. (18 U.S.C. § 3161(h)(8)(A))

(C) In ordering a continuance under subparagraph (7)(B), the Court shall set forth on the record its specific reasons for finding that the ends of justice outweigh the best interests of the public and the defendant in a speedy trial. The factors, among others, which the court shall consider are:

(i) Whether a failure to grant a continuance would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice. (18 U.S.C. § 3161(h)(8)(B)(i))

(ii) Whether the case is so unusual or so complex due to the number of defendants, the nature of the prosecution or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section. (18 U.S.C. § 3161(h)(8)(B)(ii))

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the facts upon which the grand jury must base its determination are unusual or complex or because of events beyond the control of the court or the government. (18 U.S.C. § 3161(h)(8)(B)(iii))



(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. (18 U.S.C. § 3161(h)(8)(B)(iv))

(D) No time may be excluded because of general congestion of the court's calendar or a lack of diligent preparation or a failure to obtain available witnesses to either party. (18 U.S.C. § 3161(h)(8)(C))

(8) A period of delay resulting from a continuance which is ordered by the court to promote the efficient administration of justice because the judge to whom the case is assigned is unavailable to commence trial of the defendant within the time limits of this plan when that unavailability is due to the involvement of the judge in an ongoing trial and neither the transfer of the case to another judge nor the interruption of such other trial would serve the best interests of justice.

(A) The excluded period shall commence on the date on which a continuance is ordered.

(B) The excluded period shall conclude fourteen days after the termination of such other trial or on such earlier date as the court may determine.

(9) A reasonable period of delay resulting from a transfer of the defendant from a state or federal penal institution to this court for trial.

(A) The excludable period shall commence on the date on which the attorney for the government files a petition for a writ of *habeas corpus ad prosequendum* with the Clerk.

(B) The excludable period shall conclude on the date on which the United States Marshal notifies the attorney for the government and the clerk of the availability of the defendant for trial in this district.

(c) CONTINUANCES.

(1) PRE-INDICTMENT

(A) If 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 for a continuance with the judge assigned to the miscellaneous business docket.

(B) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the grounds for the proposed exclusion. If the motion is for a continuance under paragraph 5 (b) (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.

(2) POST-INDICTMENT. If after indictment it is determined that a continuance of an arraignment or trial beyond the time limit set forth in section 4 is justified, the court shall set forth its findings in the record, either orally or in writing.

(3) CONDITIONS ON CONTINUANCE. The court may grant a continuance under this plan for either a specific period of time or a period to be determined by reference to a future event (such as recovery from illness) not within the control of the government. If any continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports on the continued existence of the circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

(d) COMPUTATION OF TIME LIMITS. In computing any time limit other than an excluded period, the day upon which an act or event occurs which causes a designated period of time to commence to run shall not be included. Computation of an excluded period shall include both the first and the last day of the excludable act or event.

(e) RECORD KEEPING. A single automated docket covering both proceedings before magistrate judges and district judges in misdemeanor and felony cases shall be maintained by the clerk of court and shall contain a record of

excludable time. A magistrate judge's courtroom deputy clerk shall take minutes of the magistrate's orders and shall record them in the same manner as does a courtroom deputy clerk for a district judge. A record of the proceedings in a Class A misdemeanor case shall be maintained upon a docket by the magistrate judge's courtroom deputy clerk until final disposition, if the parties have waived trial before a district judge and jury. At the conclusion of a Class A misdemeanor offense case or at such time as the defendant refuses to consent to trial before the magistrate judge, the magistrate judge's courtroom deputy clerk shall transmit the case file to the clerk of court for the purpose of redrawing the case to a district judge.

(f) ESTABLISHING EXCLUDABLE PERIODS.

(1) DELAY RECORDED BY MAGISTRATE JUDGE. At the conclusion of the pretrial phases of a case before a magistrate judge, the magistrate judge shall compute the time remaining for trial and shall record the time limit in the Magistrate Judge's Status Report as required by LR 116.5(A)(5) and 116.5(B)(4) and 116.5(C)(8) and 116.5(D)(4). In computing the time limit, the magistrate judge may take into account any periods of excludable delay which have occurred to that date, including periods of delay enumerated in LR 112.2, whether based upon his/her own knowledge of the case or upon motion of the parties, and shall issue an Order On Excludable Delay, specifying the amount of time to be excluded and the reasons for the exclusion. A copy of the order shall accompany the Magistrate Judge's Status Report.

(2) DELAY RECORDED BY COURTROOM DEPUTY. The courtroom deputy or a clerk serving as the courtroom deputy shall calculate the amount of excludable delay, if any, based upon his/her own knowledge

of the case, and shall submit a report thereof, to the judge for his/her approval. The clerk shall then make an entry on the case docket of the Excludable Delay by specifying the start and end dates for the time to be excluded and the basis for the exclusion in the CM/ECF docketing system. The statement of the reasons for an exclusion based on 18 U.S.C. § 3161(h)(8)(A) and § 5(h)(7)( B) of this Plan as required by 18 U.S.C. § 3161(h)(8)(A) and § 5(h)(7)( C) of this Plan may be made either in the CM/ECF docketing system, in a separate order or on the record in open Court.

(3) DELAY RECORDED BY JUDGE ACTING *SUA SPONTE*. If a judge acts *sua sponte* to cause delay which is excludable under this plan, the amount thereof shall be calculated by the judge and the excludable period shall be recorded at his/her direction by the courtroom deputy who shall make an entry on the case docket of the Excludable Delay specifying the start and end dates for the time to be excluded and the basis for the exclusion in the CM/ECF docketing system. The statement of the reasons for an exclusion based on 18 U.S.C. § 3161(h)(8)(A) and § 5(h)(7)( B) of this Plan as required by 18 U.S.C. § 3161(h)(8)(A) and § 5(h)(7)( C) of this Plan may be made either in the CM/ECF docketing system, in a separate order or on the record in open Court.

(4) DELAY RECORDED PURSUANT TO MOTION OF PARTIES.

(A) Any motion to exclude a period of delay shall be filed forthwith upon the occurrence of the act or event which would result in a period of excludable delay. A motion to exclude a period of

delay shall conform to the requirements of LR 7.1 as made applicable to criminal cases by LR 112.1. Notwithstanding the provisions of LR 7.1(b)(2), opposition to a motion to exclude a period of delay shall be filed within five court days after the filing of the motion.

(B) In ruling on a motion to exclude a period of delay, a district judge or magistrate judge may rely on the facts stated in the motion, in any opposition filed thereto, and in the accompanying affidavits, or may order a hearing on the motion.

(C) If a motion to exclude a period of delay is granted, the excludable period shall be deemed to have commenced on the date on which the motion was filed in proper form or on such other date as the district judge or magistrate judge may determine and shall conclude on the date ordered by the district judge or magistrate judge.

(D) Nothing in this paragraph may be deemed to limit the power of a district judge or magistrate judge to determine excludable periods of delay without the requirements of motion or hearing, provided that notice of any such action is given to all parties.

(5) STIPULATION BY THE PARTIES.

(A) 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.

(B) To the extent that the amount of time stipulated does not exceed the amount recorded on the docket for any excluded period of

delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall likewise be conclusive as to a co-defendant for the limited purpose of determining, pursuant to paragraph 5(b)(6), whether the time limit for trial has run as to the defendant who is a party to the stipulation.

(C) 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.

(6) OBJECTIONS: WAIVER OF OBJECTIONS.

(A) A party who wishes to object to a computation by a magistrate judge shall file an objection pursuant to Rule 59(a) of the Federal Rules of Criminal Procedure with the magistrate judge within the time period specified in that Rule.

(B) A party who wishes to object to a computation by a district judge shall file an objection with the district judge within seven days after service of notice of the computation on that party.

(C) The disposition of an objection shall be final.

(D) A party who fails to object to a computation within the prescribed period shall be deemed to have waived his/her objection.

(7) TIME: COMPUTATION. Time shall be computed pursuant to Rule 45 (a) of the Federal Rules of Criminal Procedure.

## **6. JUVENILE PROCEEDINGS**

(a) **TIME WITHIN WHICH TRIAL MUST COMMENCE.** The trial of an alleged delinquent who is in detention pending trial shall commence within thirty days after the beginning of such detention as required by 18 U.S.C. § 5036 and subject to the exceptions stated therein.

(b) **TIME OF DISPOSITIONAL HEARING.** If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty court days after trial, unless the court has ordered further study of the juvenile pursuant to 18 U.S.C. § 5037 (e).

(c) **SANCTIONS.** If the trial of an alleged delinquent who is in detention has not commenced within thirty days he shall, pursuant to 18 U.S.C. § 5036 and subject to the exceptions stated therein, be entitled to dismissal of his/her case.

## **7. EFFECT OF NONCOMPLIANCE WITH TIME LIMITS**

(a) **DISMISSAL.** The sanction of dismissal for non-compliance with the time limits set forth in the Speedy Trial Act of 1974 may entitle the defendant to dismissal of the charges against him pursuant to 18 U.S.C. § 3162(a). Nothing in this plan may be construed so as to require that a case be dismissed in circumstances in which dismissal would not be required by 18 U.S.C. § 3162. Notwithstanding the foregoing, the court shall retain the power to dismiss a case for unnecessary delay pursuant to Rule 48 (b) of the Federal Rules of Criminal Procedure.

(b) **DEFENDANT RESPONSIBLE FOR NONCOMPLIANCE.** If the court finds after hearing that any defendant who is not in custody is responsible for a failure to comply with the time limits of this plan, the court may, unless there is



good cause shown for the failure to comply, modify or revoke the conditions of the defendant's release consistently with the provisions of 18 U.S.C. § 3148.

(c) **ATTORNEY MISCONDUCT.** In any case in which counsel for either party knowingly fails to disclose the fact that an essential witness is absent or unavailable, files a meritless motion solely for the purpose of delay, knowingly makes a false statement for the purpose of obtaining a continuance, or otherwise willfully fails to proceed to trial without justification consistent with the provisions of 18 U.S.C. § 3161, the court may, in addition to any other authority or power available to it, punish counsel within the terms of 18 U.S.C. §§ 3162 (b) (A) - (E) according to the court's determination of the degree of culpability of counsel.

## **8. PERSONS SERVING TERMS OF IMPRISONMENT**

If the United States Attorney knows that a person charged with a federal criminal offense is serving a term of imprisonment in any penal institution, it shall be his/her duty promptly:

(a) to undertake to obtain the presence of the prisoner for plea and trial (18 U.S.C. § 3161(j)(1)(A));

or,

(b) if the United States Attorney is unable to obtain the presence of the defendant, to cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner of his/her right to demand trial. (18 U.S.C. § 3161(j)(1)(B))

## **9. MONITORING COMPLIANCE WITH TIME LIMITS**

(a) The office of the clerk is responsible for entering and verifying Speedy Trial Act information in the Court's automated database. In addition, that office is

also responsible for maintaining any statistical data required by the Administrative Office of the United States Courts.

(b) The office of the clerk is also responsible for preparing orders of excludable delay as may be required for the Judicial Officer's signature.

(c) At not more than one-month intervals, the office of the clerk shall review the status of all persons awaiting trial. The clerk shall immediately notify the presiding Judicial Officer of any case in which the maximum time for trial has been exceeded or is within thirty days of being exceeded. Cases shall be reassigned as appropriate to carry out the purpose of this plan. The United States Attorney shall be advised of any case in which his/her office appears to have been responsible for unnecessary delay.

#### **10. EFFECTIVE DATE**

After approval by the Reviewing Panel designated in accordance with 18 U.S.C. § 3165 (c), the time limits and procedures set forth herein shall become effective on December 9, 2008, and shall supersede those previously in effect.