

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: THE SPEEDY TRIAL ACT PLAN : MISC. NO. 3:MI-94-178
**FOR THE UNITED STATES DISTRICT :
COURT FOR THE MIDDLE DISTRICT :
OF PENNSYLVANIA :**

STANDING ORDER

IT IS ORDERED THAT the Court hereby adopts the attached Speedy Trial Act Plan for the United States District Court for the Middle District of Pennsylvania, as amended April 1994, pursuant to 18 U.S.C. § 3165(d)(3).

/s/

Sylvia H. Rambo, Chief Judge

/s/

William J. Nealon, U.S.D.J

/s/

Edwin M. Kosik, U.S.D.J.

/s/

Malcolm Muir, U.S.D.J.

/s/

James F. McClure, U.S.D.J.

/s/

Richard P. Conaboy, U.S.D.J.

/s/

Thomas I. Vanaskie, U.S.D.J.

/s/

William W. Caldwell, U.S.D.J.

DATED: September , 1994

PLAN FOR PROMPT

DISPOSITION OF

CRIMINAL CASES

Final plan pursuant to Speedy Trial Act of 1974 - 18 U.S.C. 3165(D)(3). **As amended April of 1994.**

UNITED STATES DISTRICT COURT PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

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SECTION I

Introductory Material

**SPEEDY TRIAL PLAN
FOR**

**THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

ARTICLE I

101. ADOPTION OF PLAN.

In compliance with the Speedy Trial Act of 1974, the Speedy Trial Act Amendments Act of 1979, and specifically 18 U.S.C. 3165, 3166, the judges of the United States District Court for the Middle District of Pennsylvania hereby modify this plan for the disposition of criminal cases in this district. Upon approval of the Judicial Council of the Third Circuit and the Chief Judge of this District, or his or her designee, this plan will be effective on and after May 1, 1994.

102. MEMBERS OF THE SPEEDY TRIAL ACT PLANNING GROUP OF THIS DISTRICT:

Honorable Sylvia H. Rambo, Chief Judge

Honorable Edwin M. Kosik, U.S. District Judge

Honorable James F. McClure, U.S. District Judge

Honorable Thomas I. Vanaskie, U.S. District Judge

Honorable William J. Nealon, U.S. District Judge

Honorable Malcolm Muir, U.S. District Judge

Honorable Richard P. Conaboy, U.S. District Judge

Honorable William W. Caldwell, U.S. District Judge

Honorable Raymond J. Durkin, U.S. Magistrate Judge

Honorable J. Andrew Smyser, U.S. Magistrate Judge

Honorable Thomas M. Blewitt, U.S. Magistrate Judge

David Barasch, U.S. Attorney

Joseph P. Donohue, Chief, U.S. Probation Officer

James F. Wade, Federal Public Defender

Marilyn C. Zilli, Esq.

Lance S. Wilson, Clerk of Court

103. LOCATION OF RECORDS.

In compliance with 18 U.S.C. 3165(f), the district plan and recommendations of the Planning Group shall become public documents upon final adoption of the plan. Copies will be available as follows:

(a) For Inspection:

(1) The District Plan. At the Clerk's Offices at Scranton, Harrisburg & Williamsport.

(2) Recommendations of the Planning Group. At the Clerk's Office, Scranton, Pa.

(b) Purchasing Copies:

(1) The District Plan. Available at Clerk's Offices (See (a)(1) above). Price: Per page charge currently in effect for copies of documents.

(2) Recommendation of the planning Group. Per page charge currently in effect for copies of documents.

104. The District Court, may with the approval of the Reviewing Panel of the Judicial Council of the Third Circuit, modify or amend this plan at any time. Such modification or amendment shall be effective, unless specified otherwise, on and after the approval of the Judicial Council and shall be attached to the plan as addenda.

SECTION II

Statement of Time Limits Adopted by the Court and Procedures for
Implementing Them

ARTICLE II

STATEMENT OF TIME LIMITS TO TAKE EFFECT May 1, 1994 AND PROCEDURES FOR IMPLEMENTING THEM

201. Pursuant to the Requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, The Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (P.L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. 5036, 5037), the judges of the United States District Court for the Middle District of Pennsylvania 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.

202. APPLICABILITY.

- (a) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by the United States Magistrate Judges except for petty offenses as defined in 18 U.S.C. 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.
- (b) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.
- (c) Time Computations. For the purpose of sanctions as provided in 3162 of the Act, a time limit in this Plan which ends on a Saturday, a Sunday or a legal holiday will be computed as provided for in rule 45(a) of the federal rules of Criminal Procedure.

203. PRIORITIES IN SCHEDULING CRIMINAL CASES.

- (a) Preference Generally. Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal rules of Criminal Procedure.
- (b) Preference as Between Criminal Defendants. The trial of defendants in custody solely awaiting trial on the federal charge contained in the pertinent indictment, information, or complaint and high risk defendants as hereinafter defined should be given preference over other criminal cases.

204. 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 an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within thirty (30) days of arrest or service.
- (b) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the thirty (30) day period prescribed in subsection (a), such period shall be extended an additional thirty (30) days.
- (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 this district at such time as the person (i) is held in custody solely for the purpose of responding to that charge; (ii) is delivered to the custody of a

federal official in connection with that charge; or (iii) appears before a judicial officer in connection with the charge; (iv) if incarcerated on other charges, is served with a copy of the indictment. (Alternative (iv) is significant for record keeping purposes only).

(d) Related Procedures.

(1) 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 and place on the record the date on which the arrest took place.

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

205. TIME WITHIN WHICH TRIAL MUST COMMENCE.

(a) Time Limits. The trial of a defendant shall commence not later than seventy (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 of the defendant's first appearance before a judicial officer of this district.

(b) Retrial; Trial After Reinstatement of an Information or Indictment. The retrial of a defendant shall commence within seventy (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 passage of time make trial within seventy (70) days impractical. The extended period shall not exceed one hundred eighty (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 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.

(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 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.

(3) 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 computations. 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.⁽¹⁾

If the subsequent charge is contained in a 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.

(e) Measurement of Time Periods. For the purpose 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 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.

(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) Related Procedures.

(1) At the time of the defendant's earliest appearance before a judicial officer of this district, the judicial officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules.

(2) The magistrate judge or clerk shall obtain from the defendant, and place on record, a good address and telephone number where the defendant can be reached or served by the Court, and shall instruct the defendant to immediately notify the court of any change of address or phone number.

(3) Unless other adequate steps have already been taken assuring representation by counsel and timely arraignment, the Clerk will arrange to have the United States Marshal, when serving a copy of the indictment (i) give the defendant a written notice of arraignment, and (ii) obtain the name and address of defendant's private counsel. In a case where it is not certain that the defendant already has or will retain private counsel, the Clerk and/or Federal Public Defender will arrange for the defendant to receive the financial affidavit form for appointment of counsel impressing the importance of prompt filing. The Clerk will set a time limit within which:

a. The defendant will obtain private counsel or proceed pro se, if the defendant does not qualify for court appointed counsel.

b. If the defendant qualifies for court appointed counsel, such counsel will be appointed.

(4) The trial date should be set after consultation with counsel for the defendant and the attorney for the government. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short term calendar.

(5) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting or will be reached as expeditiously as possible within the short term calendar list. A conflict in schedules of Assistant United States Attorneys or defense counsel will be grounds for a continuance or delayed setting only if approved by the court, and called to the court's attention at the earliest practicable time. The Court shall state the reason(s) for the continuance in its order granting any continuance(s). The United States Attorney will familiarize himself or herself with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be ready for trial.

(6) In the event that the complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall 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 therewith.

(7) At the time of the filing of a complaint, indictment, or information described in paragraph (6), the United States Attorney shall give written notice to the court of that circumstance and of the U.S. Attorney's position with respect to the computation of the time limits.

(8) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

(9) The chief judge may reassign any or all of the criminal cases of one judge to other judges whenever the chief judge determines that because of sickness, disability, or extensive time in trial likely to be

required in a criminal or civil case already started, or for other good reason, reassignment is necessary to meet the time limit for commencing trial in such cases.

206. DEFENDANTS IN CUSTODY AND HIGH RISK DEFENDANTS.⁽²⁾

(a) Time Limits. Notwithstanding any longer time periods that may be permitted under section 204 and 205, the following time limits will also be applicable to defendants in custody and high risk defendants as herein defined:

(1) Defendants in Custody. The trial of a defendant held in custody solely for the purpose of trial on a federal charge shall commence within ninety (90) days following the beginning of continuous custody on the federal charges pending in the Middle District.

(2) High Risk Defendants. The trial of a high risk defendant shall commence within ninety (90) days of the designation as high risk.

(b) Definition of High Risk Defendant. A high risk defendant is one reasonable designated by the United States Attorney as posing a danger to himself or herself or any other person or to the community.

(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 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) 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 will begin at that time.

(3) A trial shall be deemed to commence as provided in sections 205(e)(e)and (4).

(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 of the beginning of such custody.

(2) The United States Attorney 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.

(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 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 or her counsel but shall not be made known to other persons without the permission of the court.

207. EXCLUSION OF TIME FROM COMPUTATION.

(a) Applicability. In computing any time limit under Sections 204, 205 or 206, periods of delay set forth in 18 U.S.C. Section 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under Section 208. In applying excludable time under Section 3161(h)(1)(F), the time for filing of briefs relative to a pretrial motion as provided for in Local Rule 7.5, viz, a brief in support of a motion must be submitted within ten (10) days of the filing of the motion; an opposing brief must be filed within fifteen (15) days after service of the movant's brief, and the moving party may file a reply brief within ten (10) days after service of respondent's brief, will be the maximum time excluded unless the court orders a hearing on the motion or additional extensions of time for filing briefs, not to exceed ten (10) days as to each brief, are specifically allowed by the court. In the absence of extenuating circumstances or with the consent of the defendant, the hearing on the motion shall be held within twenty (20) days of the filing of the final brief. If post hearing briefs are requested, they must be filed within fifteen (15) days after the hearing. (Per Order of this Court amending the Speedy Trial Plan, Misc. No. 83-301, May 15, 1987.)

(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. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney.

(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) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in law or fact. It shall similarly be conclusive as to a co-defendant 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.

(3) 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.

(d) Pre-Indictment Procedures.

(1) 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 204 the U.S. Attorney may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. 3161 (h)(8), the U.S. Attorney shall file a written motion with the court requesting such a continuance.

(2) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. 3161(h)(8), 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.

(3) 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. The Court shall state the reason(s) for the continuance(s) in its order granting any continuance(s). 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 the light of the facts of the particular case.

(e) Post-Indictment Procedures.

(1) At the beginning of a case and at each appearance thereafter, counsel may check personally or by phone with the Clerk regarding the completeness and accuracy of excludable time recorded and may bring to the court's immediate attention any claim that the record is in any way incorrect.

(2) In the event that the court continues a trial beyond the time limit set forth in sections 205 and 206 the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. 3161(h).

(3) If it is determined that a continuance is justified, the court shall set forth its findings in the record, including the reason(s) for the continuance(s) either orally or in writing. If the continuance is granted under 18 U.S.C. 3161 (h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. 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.

208. 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 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. 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 205(d) 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.

209. TIME WITHIN WHICH DEFENDANT SHOULD BE SENTENCED.

As the result of the required use of guideline sentencing effective November 1, 1987, pursuant to the Sentencing Reform Act of 1984, the following is adopted as the policy to be followed in

this District for guideline sentencing.

After a verdict of guilty, or the entry of a plea of guilty or nolo contendere, the sentencing procedure will be as follows:

(a) Within seven (7) working days, the Attorney for the Government shall provide to the Probation Office a Statement of Relevant Facts, and any other pertinent documents pursuant to the

Federal Rules of Criminal Procedure Rule 32(c)(2).

(b) After consultation with the Probation Officer, the Court, promptly after a verdict of guilty or acceptance of a plea of guilty or nolo contendere, shall set a date by which the Probation Officer shall disclose the Presentence Investigation Report to the defendant, to counsel for the defendant and the government. Within fifteen (15) days after such disclosure, counsel shall communicate to the Probation Officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the Report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing.

(c) After receiving counsel's objections, the Probation Officer shall conduct any further investigation and

make any revisions to the Presentence Report that may be necessary. The Officer may require counsel for both parties to meet with the Officer to discuss unresolved factual and legal issues.

(d) Prior to the date of the sentencing hearing, the Probation Officer shall submit the Presentence Report to the sentencing judge. The Report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the Officer's comments thereon. The Probation Officer shall certify that the contents of the Report, including any revisions thereof, have been disclosed to the

defendant and to counsel for the defendant and the government, that the content of the addendum has been communicated to counsel, and that the addendum fairly states any remaining objections.

(e) Except with regard to any objection made under subdivision (b) that has not been resolved, the Report of the presentence investigation may be accepted by the Court as accurate.

The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the defendant, or the government.

(f) The times set forth in this rule may be modified by the Court for good cause shown, except that the fifteen (15) day period set forth in subsection (b) may be diminished only with the consent of the defendant.⁽³⁾

(g) Nothing in this Rule requires the disclosure of any portions of the Presentence Report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

(h) The Presentence Report shall be deemed to have been disclosed: (1) when a copy of the Report is physically delivered; (2) one day after the Report's availability for inspection is orally communicated; or (3) three days after a copy of the Report or notice of its availability is mailed.

210. JUVENILE PROCEEDINGS.

(a) Time Within Which Trial Must Commence. An alleged

delinquent who is in detention pending trial shall be brought to trial within thirty (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 twenty (20) court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. 5037(C).

211. SANCTIONS.

(a) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to 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 in circumstances in which such action would not be required by 18 U.S.C. 3162 and 3164.⁽⁴⁾

(b) High Risk Defendants. A high risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his or her release conditions automatically reviewed. A high risk defendant 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 under Chapter 207 of Title 18 U.S.C. to ensure that he or she 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 his or her case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his or her counsel, or would be in the interest of justice in the particular case.

212. 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 U.S. 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).

213. EFFECTIVE DATES.

The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's plan does more than merely reflect the amendments, the revised plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. 3162 and reflected in Section 211 (a) and

(c) of this plan shall apply only to defendants whose cases are commenced by arrest or summonses on or after July 1, 1980, and to indictments and information filed on or after that date.

SECTION III

Summary of Experience Under the Act Within the District

ARTICLE III

SUMMARY OF DISTRICT EXPERIENCE UNDER THE ACT.

301. PROGRESS TOWARD MEETING THE PERMANENT TIME LIMITS.

Progress toward the permanent time limits can best be shown by comparing statistics since the beginning of the Speedy Trial Act. Those statistics show the following:

(a) Interval 1, Time Between Arrest or Service of a Summons and the Filing of an Indictment. During the Transitional Plan period of July 1, 1976 to June 30, 1979, one hundred and nine (109) defendants were arrested or served with a summons prior to indictment. Ninety-seven (97) percent were indicted within the time required (60) days up to 6/30/77, 45 days from 7/1/77 to 6/30/78 and 35 days from 7/1/78 to 6/30/79). Almost ninety 90 percent (89.6) were indicted within the final time frame of 30 days provided in the Speedy Trial Act.

There were eight (8) defendants in the interval 1 category between July 1 and December 31, 1979. All were indicted within the final time frame of thirty (30) days provided in the Speedy Trial Act.

(b) Interval 2, Indictment to Trial, Guilty Plea or Dismissal.

The Speedy Trial Act Amendments Act of 1979 combined the former intervals for arraignment (10 days) and trial (60) days into one interval of seventy (70) days from indictment to trial. During the period of July 1, 1976 to June 30 1979, four hundred and thirty (430) defendants began this interval of indictment to trial. In the period, July 1, 1976 to January 30, 1977, the trial limit of 180 days was exceeded with 2 defendants (1%); from July 1, 1977 to June 30, 1978, the trial limit of 120 days was exceeded with one defendant of the 132 processed in that period, and from July 1, 1978 to June 30, 1979 all defendants completed the interval within the 80 day time limit.

All defendants cases terminated between July 1, 1979 and December 31, 1979 were handled within the 70 days time called for in the Speedy Trial Act Amendments Act.

(c) The district's experience during the years shows that the final net time limit of 70 days from indictment to trial should be met.

302. RECENT STATISTICS CONCERNING SPEEDY TRIAL TIME LIMITS

The following statistics are based on the time period of January 1, 1993 through December 31, 1993 and depict how the Middle District of Pennsylvania has done under the time limits allowed under the Speedy Trial Act.

(a) Interval 1, Time Between Arrest or Service of Summons and

Filing of Indictment/Information. During calendar year 1993 fifty-nine (59) defendants were arrested or served with a summons prior to indictment/information. All fifty-nine (59) defendants in this interval were indicted or had informations filed against them within the thirty (30) day time limit allowed under the Speedy Trial Act.

(b) Interval 2, Indictment to Trial, Guilty Plea or

Dismissal. During the time period of January 1, 1993 through December 31, 1993, three hundred and ten (310) defendants began this interval of indictment to trial, guilty plea or dismissal. All three hundred and ten (310) defendants completed the interval within the seventy (70) day time limit provided in the Speedy Trial Act.

303. PROBLEMS ENCOUNTERED.

As indicated in section 302 of the previous plan for this district, we did not meet the net time requirement in a few cases during the beginning years under the Speedy Trial Act. However, since July 1978, we have consistently been within the net times. It appears that with continued cooperation and attention to

communication of criminal case and defendant information between the court and other departments or agencies the time limits of the Speedy Trial Act should pose no problem for this court.

304. THE INCIDENCE OF, AND REASONS FOR, REQUESTS FOR ALLOWANCE OF EXTENSIONS OF TIME BEYOND THE DISTRICT'S STANDARDS.

(a) Incidence of Extensions

(1) During the period of July 1, 1976 through June 30 1979, there were 196 instances where the processing time was extended by excludable time. Those extensions affected 139 defendants, 28%, of the 497 terminated in that period.

The processing intervals where the allowance occurred and the number of allowances in each interval were as follows:

Interval 1 8

Interval 2 12

Interval 3 176

The number of days allowed in these 196 instances were as follows:

<u>DAYS</u>	<u>NUMBER OF INSTANCES</u>
1 - 10	83
11 - 21	29
22 - 42	43
43 - 84	24
85 - 120	11
121 - plus	6

(2) From July 1 to December 31, 1979, 46 defendants were terminated. There were 11 instances of delay involving 9 (19.6%) of the defendants. Two instead of three processing intervals began at this time. Two excludable time allowances occurred in interval 1 and nine in interval 2. There was a substantial decrease in the length of the excludable periods as follows:

<u>DAYS</u>	<u>NUMBER OF INSTANCES</u>
1 - 10	6
11 - 21	1
22 - 42	4
43 - 84	0
85 - 120	0
121 - plus	0

(3) During calendar year 1993, there were ninety-four (94) instances where the processing time was extended by excludable time. These extensions affected fifty-five (55) of the three hundred and ten (310) defendants who began and completed interval 2 during this time period. The following is a breakdown of defendants and the number of excludable days they were allowed:

<u>DAYS</u>	<u>Number of Defendants</u>
1 - 10	6
11 - 21	3
22 - 42	9
43 - 84	13

85 - 120 13

121 plus 11

(b) Reasons for Extension. Allowances were granted for the following reasons and in the number of cases shown opposite each reason.

July 1, 1976 through December 31, 1979.

<u>REASONS</u>	<u>NUMBER OF INSTANCES</u>
Examination or hearing for mental or physical incapacity.	5
Hearings on pretrial motions.	36
Motions (from filing to prompt disposition)	4
Transfers from other districts.	4
Motions actually under advisement	98
Misc. proceedings, probation or parole revocation.	1
Transportation from another district.	1
Unavailability of defendant or essential witness.	9
Period of mental or physical incompetence of defendant to stand trial.	2

Superseding indictment and/or new charges. 3

Defendant awaiting trial of co-defendant when no severance has been granted. 3

Continuances granted in the ends of justice. 35

Time up to withdrawal of guilty plea. 3

Grand Jury indictment time extended. 3

Sixty-five percent of the exclusions were for hearings on motions or motions under advisement. Continuances granted in the ends of justice represent 17% of the total exclusions.

January 1, 1993 through December 31, 1993.

<u>REASONS</u>	<u>NUMBER OF INSTANCES</u>
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Exam or hearing for mental or physical incapacity	1
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Motions (from filing to disposition)	35
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Continuances granted in the ends of justice	17
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Agreement to defer prosecution (pending pre-trial diversion investigation)	5
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In-court proceedings	36
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305. EFFECT OF THE PREVAILING TIME LIMITS ON CRIMINAL JUSTICE ADMINISTRATION.

- (a) The prevailing time limits make it imperative that there be prompt and continuous communication among the persons, parties and agencies in the criminal justice system. This will need to be stressed in the training of staff for all positions.
- (b) Prosecutors and defense attorneys will have to avoid case overload. They will have to concentrate on a lesser individual case load to properly prepare and to respond to all case activities and events within the time limits.
- (c) Attention to detail has become an important aspect in avoiding delay. Record keeping needs to be thorough and accurate. Record keepers must be well trained, supervised, and continuously updated. These aspects, as well as communication in (a), supra, indicates greater attention in the future to individual training, to supervision, and to selection of more qualified personnel.
- (d) There are no indications to date that the time limits have had an effect on transfer of cases.
- (e) Current records and statistics do not show that the time limits have had any effect on appeals. As sanctions might be imposed, there is a possibility for some appeals.
- (f) General costs do not appear to be affected by Speedy Trial Act time limits. However, the time limits and additional procedural and record keeping requirements do have a greater impact, presently unmeasured, on personal time. Therefore, some cost is involved but can't be accurately determined at this time.

306. FREQUENCY OF THE USE OF SANCTIONS UNDER 18 U.S.C. 3164.

The district has not needed to invoke any sanctions to date.

SECTION IV

Changes in Practices and Procedures that Have Been or Will Be Adopted by the District Court to Expedite the

ARTICLE IV

CHANGES IN PROCEDURES AND INNOVATIONS THAT HAVE BEEN OR WILL BE ADOPTED BY THE COURT TO EXPEDITE THE DISPOSITION OF CRIMINAL CASES IN ACCORDANCE WITH THE SPEEDY TRIAL ACT.

401. CHANGES ADOPTED BY THE COURT.

(a) This court's past practice of greater utilization of magistrate judges and expansion of their duties and responsibilities will continue. A new magistrate judge's rule is in process. Increased assignments in both the civil and criminal areas will have a beneficial effect on judges' time, and thus, allow judges to expedite disposition of criminal cases.

(b) As is necessary, each judge will have a qualified magistrate judge take the judge's arraignments, referring only those cases involving a guilty plea to the judge. If a defendant represented by counsel indicates an intention to plea guilty and requests that presentence investigation be started immediately to expedite the disposition of his case, the magistrate judge shall record such intention and request.

(c) Forms and instructions have been developed to record the appearance of a defendant's attorney and the delivery of a copy of the indictment at the bail hearing. Such a procedure directs early attention to the requirements of Section 3161(c)(2) of the Act.

402. CHANGES ADOPTED BY SUPPORT UNITS OR OTHER AGENCIES.

(a) Clerk's Office Docketing. The criminal docketing procedure is now fully automated. This enables the Clerk to be conversant with the status of each case and better keep track of the myriad details relating to processing intervals, deadlines and excludable times required by the Act. The docketing clerk is able to better assist in keeping the judge, the clerk and other interested persons alerted to deadlines and action required in each case. This has also resulted in the clerks having more accurate and quicker information available to them to answer counsel's questions about the excludable time applied when counsel reviews the record as provided in Section 207(e)(1) of this plan.

The automation of the docketing function has generated numerous reports, both monthly and on request, which allow the Clerk and the court to monitor the progress of all criminal cases.

(b) Grand Jury. The three division grand juries are now scheduled so one is in session early each month, one in the middle of the month and one at the end of the month. This should prevent any problem with the thirty days to indictment for any defendant.

SECTION V.

Additional Resources Needed, if any, to Achieve Compliance with the Act by July 1, 1979 (18 U.S.C. 3166(d))

ARTICLE V.

ADDITIONAL RESOURCES NEEDED TO ACHIEVE COMPLIANCE WITH THE ACT

None at the present time.

SECTION VI

Recommendations for Changes in Statutes, Rules, or Administrative Procedures (18 U.S.C. 3166(b)(7),(d)(e))

ARTICLE VI

RECOMMENDATIONS FOR CHANGES IN STATUTES, RULES, OR ADMINISTRATIVE PROCEDURES.

There are no recommendations for change in statutes, rules or administrative procedures the court desires to make at this time.

SECTION VII **Statistical Tables**

(For historical purposes only)

Upon approval of the Judicial Council of the Third Circuit, this modified plan shall be effective May 1, 1994, and thereafter.

/s/

SYLVIA H. RAMBO

Chief Judge

/s/

Edwin M. Kosik

U.S. District Judge

/s/

James F. McClure, Jr.

U.S. District Judge

/s/

William J. Nealon

U.S. District Judge

/s/

Malcolm Muir

U.S. District Judge

/s/

Richard P. Conaboy

U.S. District Judge

/s/

William W. Caldwell

U.S. District Judge

SAMPLE STANDARD CONTINUANCE ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

VS :

:

REPORT OF SPEEDY TRIAL ACT DELAY

AND NOW, this _____ day of , 1994, the calendaring procedures as to the above named defendant(s) in

the within action pursuant to the Court's Plan adopted pursuant to Federal Rule of Criminal Procedure 50(b) and in conformity with the provisions of the Speedy Trial Act of 1974 and the Federal Juvenile Delinquency Act and to serve the ends of justice, has been delayed for the reason that

It is further ORDERED that counsel for the defendant shall review the above stated reasons for the continuance and notify the court in writing when this case is ready to proceed.

JUDGE

(CODE -)

1. Under the rule of this paragraph, if an indictment was dismissed on motion of the prosecutor on May 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.
2. If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on detainer, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n. 24 (1978).
3. It is anticipated that the Presentence Report will be disclosed about forty (40) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and that sentence will be imposed within eighty-five (85) to one hundred (100) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere, depending upon whether objections are filed by counsel. It is the desire of this court to have prompt sentencing following the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and these time periods are set to allow compliance with the Act. Signed and effective by the Board of Judges July 1, 1989.
4. Dismissal may also be required in some cases under the Interstate Agreement on Detainer, 18 U.S.C. Appendix.