

**APPENDIX C**

**PLAN FOR THE  
UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF GEORGIA  
FOR  
ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES**

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Pursuant to the requirement of the Fed.R.Crim.P. 50(b), the Speedy Trial Act of 1974 (Chapter 208, Title 18, U.S.C.), and the Federal Juvenile Delinquency Act, as amended (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the Northern District of Georgia have adopted the following Plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings. The provisions of this Plan are procedural only. A violation of any provision hereof will not necessarily give rise to a constitutional claim.

**1. Applicability**

**(a) Offenses**

This Plan is applicable to all criminal offenses triable in this court, including cases triable by United States Magistrates, except for petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, it is not applicable to proceedings under the Federal Juvenile Delinquency Act [§ 3172].

**(b) Persons**

This Plan is 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.

**2. Priorities in Scheduling Criminal Cases**

Preference shall be given to criminal proceedings so far as practicable as required by Fed.R.Crim.P. 50(a). The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants should be given preference over other criminal cases. For the purpose of this Plan, a "high-risk" defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

### **3. Time Limits for Filing an Indictment or Information**

#### **(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 30 days of such arrest or service [§ 3161(b)].

#### **(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 30-day period prescribed in section 3(a) hereof, such period shall be extended an additional 30 days [§ 3161(b)].

#### **(c) Measurement of Time Periods**

If a person has not been arrested or served with a summons on federal charge, an arrest will be deemed to have been made at such time as the person:

- (1) Is held in custody in this district solely for the purpose of responding to the instant charge;
- (2) Is delivered to the custody of a federal official for transportation to this district to answer the instant federal charge, plus reasonable travel time not to exceed 10 days; or
- (3) Appears before a judicial officer in this district in connection with the instant federal charge.

#### **(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 for the record the date on which the arrest took place.
- (2) At the time of the defendant's earliest appearance before a judicial officer of this district, whether at arraignment or otherwise, the 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 Fed.R.Crim.P. 44. The judicial officer will also inform the defendant of his rights under this Plan and pertinent legislation.
- (3) 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.

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

#### **(a) Time Limits**

A defendant should be arraigned as soon as practicable and within 10 days of the last to occur of the following dates, if possible:

- (1) The date on which an indictment or information is filed and made public;
- (2) The date on which a sealed indictment or information is unsealed; or
- (3) The date of the defendant's first appearance before a judicial officer of this district [§ 3161(c)].

**(b) Exceptions**

Where the defendant appears without counsel and requests an opportunity to obtain or consult counsel, the court may, under appropriate circumstances, direct the entry of a plea of not guilty.

**(c) Measurement of Time Periods**

For the purposes of this section:

- (1) A defendant who signs a written consent to be tried before a magistrate shall, if no indictment or information charging the offense has been filed, be deemed indicted on the date of such consent.
- (2) An arraignment shall be considered to take place at the time a plea is tendered, taken, or entered by the court on the defendant's behalf.
- (3) 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.

**(d) Pretrial Motions**

(1) **Discovery.** Upon the entry of a plea of not guilty, the parties shall, within 10 days thereof, confer, informally with respect to pretrial discovery and the possibility of disposition other than trial.

No motion for discovery shall be entertained by the court except in conformity with the local rules governing discovery in criminal trials.

(2) **Other Pretrial Motions.** Unless an extension has been granted by the court, all pretrial motions shall be filed within 10 days after arraignment. Except for good cause the court shall not grant an extension for any motion filed pursuant to Rules 12(b)(3), 12.1, 12.2, and 41(e), Federal Rules of Criminal Procedure.

Motions filed shall be heard, considered, and determined promptly so as not to delay the trial. The parties shall have 10 days to appeal to or file objections with the district court to any order or recommendation of the magistrate.

**(e) Certification for Trial**

(1) At the earliest practicable time after order or recommendation by the magistrate as to any pretrial motions, the judicial officer before whom the case

is pending shall, after consultation with counsel for the parties, certify the case as ready for trial.

(2) Upon certification as ready for trial, the magistrate (or assigned judge) shall set the case for trial on a day certain or list it for trial on a weekly or other short-term calendar at such place within this district so as to assure a speedy trial [§ 3161(a)]. The magistrate's report and recommendation shall become the order of the court unless objection has been filed thereto.

(3) 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* [§ 3161(c)(2)]. The court will in all cases schedule trials so as to permit the Government and defense counsel adequate preparation time in light of all the circumstances.

**(f) Pleas of Nolo Contendere**

Any tender of a plea of nolo contendere shall be made at arraignment or within 10 days thereafter. The Government shall have five days to respond. Copies of the tender and the response shall be served on opposing counsel. The district court shall, in the case of prosecutions pending before it, notify the parties and the magistrate of its acceptance or refusal of such plea not less than 15 days prior to the trial date.

**5. Time Within Which Trial Must Commence**

The commencement of trial of a defendant who is in custody pursuant to State law and who has requested trial pursuant to Article III of the Interstate Agreement on Detainers (18 U.S.C., Appendix) or whose presence for trial has been obtained pursuant to Article IV of the Agreement may be affected by time limits established by Article III(a) or Article IV(c) of the Agreement. Any conflict between the Speedy Trial Act of 1974 and the Interstate Agreement on Detainers must be resolved by the decisional process.

**(a) Time Limits and Priority Defendants**

(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the 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 this court, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within 70 days from the date of such consent [§ 3161(c)(1)].

(2)(A) The trial or disposition of cases involving-

- (i) a detained person who is being held in detention solely because he is awaiting trial, and
- (ii) 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.

(B) The trial of any person described in subsections (A)(i) or (A)(ii) of this subsection shall commence not later than 90 days following the beginning of such continuous detention or designation of high risk by the attorney for the government. The periods of delay enumerated in § 3161(h) are excluded in computing the time limitation specified in this paragraph.

(C) Failure to commence trial of a detainee as specified in paragraph (B), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in paragraph (B), through no fault of the attorney for the government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in paragraph (A), shall be held in custody pending trial after the expiration of such 90-day period required for the commencement of this trial. A designated releasee, as defined in paragraph (A), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required [§ 3164].

**(b) Retrials**

Subject to the exclusions provided in 18 U.S.C. § 3161(h), where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, the new trial shall commence at the earliest practicable time, but in any event not later than 70 days after the finality of such order. If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total of not to exceed 180 days from the date on which the order of the district court occasioning the retrial becomes final, where unavailability of witnesses or other factors resulting from passage of time shall make trial within 70 days impractical.

**(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 arraignment with respect to the entire indictment or information shall be deemed to have been held on the day the order permitting withdrawal of the plea becomes final and the new plea tendered or entered [§ 3161(i)].

**(d) Superseding Charges**

If, after a complaint, an indictment, or information has been filed, a superseding 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 a charge contained in the complaint filed against an individual is dismissed or otherwise dropped or an indictment or information is dismissed on motion of a defendant, and thereafter a superseding complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, the times allowable shall begin to run anew for the time for filing a subsequent information or indictment [§ 3161(d)].

(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. Under the rule of this paragraph, if an indictment was dismissed 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 be excluded from the period within which trial must commence [§ 3161(h)(6)].

(4) In cases in which paragraph (2) or (3) applies but no arraignment is held on the original indictment or information, the time limit for commencement of trial shall be computed as if such arraignment had been held on the last permissible day for arraignment.

(5) At the time of the filing of a complaint, indictment, or information described in paragraph (3), the United States attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of the time limits.

**(e) Measurement of Time Periods**

For the purposes of this section:

(1) An arraignment shall be deemed to take place as provided in section 4(c)(2) hereof.

(2) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(3) A trial in a nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

**6. Time Within Which Defendant Should Be Sentenced**

A defendant shall ordinarily be sentenced within 60 days of the date of his conviction or plea of guilty or nolo contendere.

**7. Time Limits and Responsibilities in Particular Cases**

(a) The court has sole responsibility for setting and calling cases for trial and for publishing the trial calendars at least 20 days in advance of the first trial date. The trial calendar shall indicate the dates on which the court will be in session during that calendar. A conflict in schedules of defense counsel or assistant United States attorneys will not be a ground for a continuance or delayed setting except under circumstances approved by the court and called to the court's attention and that of opposing counsel at the earliest practicable time. The United States attorney and defense counsel will familiarize themselves with the published trial calendars of each judge and will take the necessary steps to avoid conflicts whenever possible.

(b) If the United States attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal or state institution or is detained or confined in a foreign jurisdiction, it is his duty promptly:

(1) To undertake to obtain the presence of the prisoner for plea arraignment and trial and notify the court when the defendant is available to this court's jurisdiction; or

(2) If he is unable to obtain the presence of the defendant, to cause the United States Marshal to file a detainer with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this Plan.



**(c) Measurements of Time Periods**

(1) Where a defendant is apprehended outside of this district and is held in custody, the times set out above for trial shall begin to run:

(i) In cases initially processed under Rule 20 of the Federal Rules of Criminal Procedure, at such time as the defendant rejects disposition under Rule 20; and

(ii) In proceedings under Rule 40(a) and (e) of the Federal Rules of Criminal Procedure from such time as the first appearance of the defendant in this district.

(2) Where a defendant is apprehended outside of this district and is released pursuant to the provisions of Chapter 207, Title 18, U.S.C., the times set out above for trial shall begin to run when the defendant appears before a judicial officer in this district in connection with the instant federal charge.

**(d) Division Court**

In the divisions outside of Atlanta, a defendant shall be advised upon arraignment of the time periods set out in section 5 herein. In the event the time limits provided cannot be met in such division, the case will be transferred to the Atlanta Division for disposition with the appropriate division judge presiding.

**(e) Related Procedures**

Review of Defendants in Custody and Delinquent Cases:

(1) Biweekly the United States Marshal shall furnish the clerk of court and the United States attorney with a Report of Persons in Custody (DJ Form 130).

(2) The United States attorney shall, within seven days after the close of the reporting period, file with the clerk an original and one copy of the biweekly DJ-130, Report of Persons in Custody, on which shall be indicated by case number to which division such case has been assigned for trial. The clerk shall furnish one copy of said report to the magistrate. Such information as is available to the United States attorney and the clerk regarding the time in federal custody in other jurisdictions shall be added to the report by each.

**8. Juvenile Proceedings**

**(a) Time Within Which Trial Must Commence**

An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

**(b) Time of Dispositional Hearing**

If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

## **9. Periods of Delay Excludable**

The following periods of delay are applicable to any case and shall be excluded in computing the time within which an information or an indictment must be filed, or an arraignment must be held, or a trial must commence, or a sentence must be imposed:

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

- (1) Delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;
  - (2) Delay resulting from any proceeding, including any examination of the defendant, pursuant to Section 2902 of Title 28, United States Code;
  - (3) Delay resulting from deferral of prosecution pursuant to Section 2902 of Title 28, United States Code;
  - (4) Delay resulting from trial with respect to other charges against the defendant;
  - (5) Delay resulting from any interlocutory appeal;
  - (6) Delay resulting from any pretrial motions, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;
  - (7) Delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;
  - (8) Delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of 10 days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;
  - (9) 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; and
  - (10) Delay reasonably attributable to any period, not to exceed 30 days, during which any proceeding concerning the defendant is actually under advisement by the court [§ 3161(h)(1)].
- (b) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(c) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(1) For purposes of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence.

(2) For purposes of this paragraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(d) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(e) Any period of delay resulting from the treatment of the defendant pursuant to § 2902 of Title 28, U.S.C.

(f) If the information or indictment is dismissed upon 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, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as the subsequent charge had there been no previous charge.

(g) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(h) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

(1) No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(2) The factors, among others, which a judge shall consider in determining whether or not to grant a continuance under paragraph (h) in any case are as follows:

(i) Whether or not the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(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.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in Section 3161(b) or because the facts upon which the grand jury must base its determination are unusual or complex.

(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.

(3) A continuance may be granted based on the detention of the defendant in another jurisdiction, provided the prosecuting attorney makes a showing that he has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial;

(4) A continuance may be granted based on the lack of counsel for the defendant if it is the result of reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel;

(5) No continuance under paragraph (h) of this section shall be granted because of general congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government or of the defendant's attorney.

(6) In the event that a party seeks a continuance under 18 U.S.C. § 3161(h)(8) and Section 9(h) hereof, he shall file a written motion with the court. The motion shall state whether or not the defendant is being held in custody on the basis of the complaint, the period of time proposed for exclusion, and the basis of the proposed exclusion. In appropriate circumstances, it may include a request that some or all of the supporting material be considered ex parte and in-camera.

## **10. Pre-Indictment Procedures**

(a) Except for time excludable under 18 U.S.C. § 3161(h)(8) and section 9(h) hereof, the court will not ordinarily rule on the excludability of time in computing the time within which an indictment or information must be filed.

(b) In the event that the 'United States attorney seeks a continuance under 18 U.S.C. § 3161(h)(8), he shall file a written motion with the court. The motion shall state whether or not the defendant is being held in custody on the basis of the complaint, the period of time proposed for exclusion, and the basis of the proposed exclusion. In appropriate circumstances, it 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)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the Government. If the continuance is to a date not certain, the court 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.

## **11. Post-Indictment Procedures**

(a) In the event that the court continues an arraignment or trial beyond the time limit set forth in section 4 or 5 hereof, the court shall determine whether or not the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h). In the absence of a need for a continuance, the court will not ordinarily rule on the excludability of any period of time.

(b) If it is determined that a continuance is justified, the court shall set forth its findings in the record, 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 the light of the facts of the particular case.

## 12. **Sanctions**

### (a) **Dismissal**

Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him. Nothing in this Plan shall be construed to require that a case be dismissed in circumstances in which dismissal would not be required by 18 U.S.C. § 3162.

### (b) **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 he knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which he 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).

### (c) **Dismissal for Unnecessary Delay**

The court retains the power to dismiss a case for unnecessary delay pursuant to Fed.R.Crim.P.48(b).

### (d) **Defendant's Delay**

Subject to the provisions of 18 U.S.C. § 3146, if the court finds that a defendant who is not in custody is responsible for failure to comply with the time limits, such defendant may have his release conditions reviewed and modified or revoked.

### (e) **Alleged Juvenile Delinquents**

An alleged juvenile 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 case pursuant to that Section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel or would be in the interest of justice in the particular case.

## 13. **Responsibilities of the Clerk of the Court**

(a) A Speedy Trial Act data collection and coordinating center shall be established within the clerk's office.

(b) Controls and procedures necessary to accomplish the gathering of information and data from the United States attorney, the United States magistrate, the United States Marshal, and others required by § 3166(b) and (c) of the Speedy Trial Act

shall be instituted by the clerk to include a control card, device, or mechanical means, for each defendant, on which to record and monitor the data as required and described in 18 U.S.C. § 3166(b).

(c) To facilitate statistical reporting in compliance with the Act, the specific data described and required by 18 U.S.C. § 3166(c) shall be recorded by the clerk.

(d) The clerk shall assemble and prepare all reports and statistical data required by the Administrative Office of the United States Courts and the Judicial Conference prescribed in § 3170(a).

(e) The clerk shall coordinate with agencies which have responsibilities under § 3170(b) of the Speedy Trial Act, and shall:

(1) Establish a contact source in each agency to be responsible for providing data as may be necessary to meet the requirements of the Speedy Trial Act, and

(2) Review all data so reported and monitor each agency's compliance with the requirements of the Act and this Plan.

(3) Require the United States attorney to prepare a case survey to accompany each indictment, information, or complaint, to include such data as indicated on the form to be provided by the clerk. The number of matters presented to the United States attorney for prosecution and the number of such matters prosecuted and declined are also to be provided to the clerk by the United States attorney.

(f) The clerk shall prepare periodic reports as required by the Speedy Trial Act Planning Group and the judges setting forth the factual situations in which the time standards established herein have not been met and the reason therefor, and shall recommend to the Planning group and judges procedures to meet these problems.

(g) The clerk shall monitor, on a continuing basis, the progress of each defendant toward trial and review the status of each defendant with a view toward the calendar of the court so as to:

(1) Anticipate problems which may be developing;

(2) Make recommendations to the court for reassignment of cases, rescheduling of arraignment dates and trials so as to avoid exceeding the time standards.

**(h) 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.

**(i) 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 fact or law. It shall similarly be conclusive as to a codefendant for the limited purposes of determining, under 18 U.S.C. § 3161(h)(7), whether or not 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.

#### **14. Responsibilities of the United States Marshal**

(a) The United States marshal shall make, to the clerk of the court, a written daily report to include:

(1) The names and reasons for detention of all persons taken into custody during the preceding 24 hours.

(2) Change of status of any person in custody.

(3) Any detainer filed by the marshal's office relating to Northern District of Georgia defendants.

(b) When a defendant is arrested out of the district on a warrant issued in this court, the United States marshal shall report the fact of the arrest in writing to the clerk of the court by the close of the working day on which he is made aware of the arrest.

(c) The marshal shall promptly present before a magistrate for automatic bail review any defendant who has remained in custody after arrest more than 30 days without being indicted or informed against.

#### **15. Procedures After Affirmance**

The clerk shall notify the court, the United States attorney, the defendant and his counsel immediately upon receipt of the mandate of an appellate court affirming a conviction, and the court shall take appropriate action to execute the sentence imposed or take such further action, including review and reconsideration of defendant's custody or conditional release status, as may be consistent with the interest of justice.

#### **16. Expediting Processing of Appellate Proceedings**



- (a) At the time of sentencing the court will:
  - (1) Inform the defendant and his counsel of the right of defendant to appeal under the Federal Rules of Appellate Procedure 4(b) and, if appropriate, of his right to seek leave to appeal *in forma pauperis* under the Federal Rules of Appellate Procedure 24(a);
  - (2) Require counsel who indicates an appeal is contemplated to immediately order from the court reporter such portions of the record as are to be included in the appellate record and, if less than the entire transcript is to be designated, file a statement of issues he intends to present on appeal, under the Federal Rules of Appellate Procedure 10(b).
  - (3) Require appealing counsel to make prompt satisfactory arrangements with the reporter for payment of the cost of the transcript ordered, except when leave to appeal *in forma pauperis* is granted.
- (b) In all cases, the court may properly refuse a supersedeas appeal bond until the provisions of paragraph (a) have been met or reconsider the status of any defendant not in custody pending appeal.

**17. Monitoring Compliance With Time Limits**

**(a) Responsibilities of District Planning Group**

As part of its continuing study of the administration of criminal justice in this district, the district planning group will pay special attention to those cases in which there is a failure to comply with the time limits set forth herein. From time to time, the group may make appropriate recommendations to prevent repetition of failures.

**(b) Responsibilities of Clerk**

In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts, the clerk will from time to time report to the other members of the planning group each case in which there is a failure to comply with any time limit set forth herein.

**18. Effective Date**

(a) Upon approval of the reviewing panel designated in accordance with 18 U.S.C. § 3165(c) and Fed.R.Crim.P. 50(b), the time limits and procedures set forth herein shall become effective July 1, 1980, shall supersede those previously in effect, and shall remain in effect until modified. In case of conflict between the provisions of this Plan and the Speedy Trial Act of 1974, as amended, the provisions of the Act shall govern the disposition of cases in this district.

(b) If a defendant was arrested or served with a summons before this Plan is approved, the time within which an information or indictment must be filed shall be determined under the Plan that was in effect at the time of such arrest or service.

(c) If a defendant was arraigned before the approval of this Plan and prior to July 1, 1980, the time within which the trial must commence shall be determined under the Plan that was in effect at the time of such arraignment. Defendants arraigned on or after July 1, 1980, shall be tried within the time limits provided for within section 5 hereof.

This Plan shall become effective July 1, 1980, and shall apply to all cases commenced by arrest or summons, and all indictments filed and made public prior to arrest or summons, and all informations filed on or after the effective date above, and shall supersede the Plan for Prompt Disposition of Criminal Cases, as amended, previously adopted and presently in effect.

IT IS SO ORDERED, this 2nd day of April, 1980.

CHARLES A. MOYE, JR.

*Chief United States District Judge*

NEWELL EDENFIELD  
*United States District Judge*

ROBERT L. VINING, JR.  
*United States District Judge*

WILLIAM C. O'KELLEY  
*United States District Judge*

G. ERNEST TIDWELL  
*United States District Judge*

RICHARD C. FREEMAN  
*United States District Judge*

ORINDA D. EVANS  
*United States District Judge*

HAROLD L. MURPHY  
*United States District Judge*

ROBERT H. HALL  
*United States District Judge*

MARVIN H. SHOOB  
*United States District Judge*

HORACE T. WARD  
*United States District Judge*

This Plan for the United States District Court, Northern District of Georgia for Achieving Prompt Disposition of Criminal Cases having previously been adopted by this court on April 2, 1980, and having been approved by the Reviewing Panel of the United States Court of Appeals for the Fifth Circuit on June 10, 1980, to be effective July 1, 1980, is hereby re-adopted in its entirety to become effective October 1, 1981, subject to the

approval of the Reviewing Panel of the United States Court of Appeals for the Eleventh Circuit.

Until the effective date of this plan, the present plan for the district shall remain in full force and effect.

IT IS SO ORDERED, this 20th day of August, 1981.

CHARLES A. MOYE, JR.

*Chief United States District Judge*

NEWELL EDENFIELD  
*United States District Judge*

ROBERT L. VINING, JR.  
*United States District Judge*

WILLIAM C. O'KELLEY  
*United States District Judge*

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MARVIN H. SHOOB  
*United States District Judge*

HORACE T. WARD  
*United States District Judge*

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

On this day, the Reviewing Panel of the United States Court of Appeals for the Eleventh Circuit reviewed, 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. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. Sections 5036, 5037), the re-enacted Speedy Trial Act Plan of the Northern District of Georgia which shall become effective on the date of filing in the clerk's office of the Northern District of Georgia.

The plan aforementioned, having been fully reviewed by the Reviewing Panel of this Circuit, established in compliance with the Speedy Trial Act, as amended, is hereby found to be in compliance with the time limits, delay, and sanction requirements, and related provisions mandated by the Act. The plan is further found to be in compliance with the planning process provisions of the Act; however, the Reviewing Panel is not required to and

does not express any opinion on the changes, suggestions, and recommendations of the planning groups stated in various sections of the individual plan.

Five copies of the plan of the Northern District of Georgia with a copy of this Order of Approval attached will be filed in the Administrative Office of the United States Courts, and one copy of the plan with a copy of this Order of Approval attached will be filed in the office of the clerk of the Eleventh Circuit, and in the office of the clerk of the Northern District of Georgia.

Entered for the Reviewing Panel at Atlanta, Georgia, this 2nd day of September, 1982.

Thomas H. Reese  
Secretary, Judicial Council  
United States Court of Appeals  
for the Eleventh Circuit