

**APPENDIX J. PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES**

**Final Plan Pursuant to Speedy Trial Act of 1974, As Amended 1979 - 18 U.S.C. §3165(e)(3)**

**Approved June 26, 1980  
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Amended November 20, 2002**

**Table of Contents**

**SECTION I. INTRODUCTORY MATERIAL**

- A. Adoption of Plan.
- B. Planning Group.
- C. Availability of Copies of the Plan.

**SECTION II. STATEMENT OF TIME LIMITS AND PROCEDURES FOR ACHIEVING  
PROMPT DISPOSITION OF CRIMINAL CASES**

- 1. Applicability.
  - (a) Offenses.
  - (b) Persons.
- 2. Priorities in Scheduling Criminal Cases.
- 3. Time Within Which an Indictment or Information Must Be Filed.
  - (a) Time Limits.
  - (b) Measurement of Time Periods.
  - (c) Related Procedures.
- 4. Time Within Which Trial Must Commence.
  - (a) Time Limits.
  - (b) Retrial.
  - (c) Withdrawal of Plea.
  - (d) Superseding Charges.
  - (e) Measurement of Time Periods.
  - (f) Related Procedures.
- 5. Defendants in Custody and High-Risk Defendants.
  - (a) Time Limits.
  - (b) Definition of "High-Risk Defendant."
  - (c) Measurement of Time Periods.
  - (d) Related Procedures.
- 6. Exclusion of Time From Computations.
  - (a) Applicability.
  - (b) Records of Excludable Time.
  - (c) Stipulations.
  - (d) Pre-Indictment Procedures.
  - (e) Post-Indictment Procedures.
  - (f) Motions.
- 7. Minimum Period for Defense Preparation.
- 8. Time Within Which Defendant Should Be Sentenced.
  - (a) Time Limit.
  - (b) Related Procedures.
- 9. Juvenile Proceedings.

- (a) Time Within Which Trial Must Commence.
- (b) Time of Dispositional Hearing.
- 10. Sanctions.
  - (a) Dismissal or Release From Custody.
  - (b) High-Risk Defendants.
  - (c) Discipline of Attorneys.
  - (d) Alleged Juvenile Delinquents.
- 11. Monitoring Compliance With Time Limits.
  - (a) Responsibilities of Clerk.
  - (b) Responsibilities of United States Attorney.
  - (c) Responsibilities of United States Marshal.
  - (d) Responsibilities of the Court.
- 12. Effective Dates.

## **I. INTRODUCTORY MATERIAL**

### **A. Adoption of Plan**

Pursuant to the provisions of 18 U.S.C. §3165, the United States District Court for the District of New Jersey adopts this District Plan, subject to approval in accordance with 18 U.S.C. §3165(c). This District Plan was initially prepared by the District Planning Group, formulated according to the planning process authorized by 18 U.S.C. §3168. Part II of this Plan shall be the District Plan for Disposition of Criminal cases as required by Fed. R. Crim. P. 50(b).

### **B. Planning Group**

The Planning Group for the District of New Jersey is comprised of the following members:

Honorable Clarkson S. Fisher, Chief Judge  
 Honorable Frederick B. Lacey, United States District Judge  
 Honorable William J. Hunt, United States Magistrate  
 Robert J. Del Tufo, United States Attorney  
 Angelo W. Locascio, Clerk of Court  
 John F. McMahon, Federal Public Defender  
 Richard A. Levin, Private Attorney  
 John E. Keale, Private Attorney  
 Allyn Z. Lite, Private Attorney  
 John L. Costley, Jr., Chief Probation Officer  
 Samuel F. Naples, United States Marshal  
 Professor Livingston Baker, Reporter, Seton Hall University, School of Law

### **C. Availability of Copies of the Plan**

Copies of the District Plan and of the recommendations of the Planning Group will be available for public inspection in the offices of the Clerk of the Court for the District of New Jersey.

## **II. STATEMENT OF TIME LIMITS AND PROCEDURES FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES**

Pursuant to the requirements of Fed. R. Crim. P. 50(b) the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub. 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 District of New Jersey 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 are applicable to all criminal offenses triable in this Court, including cases triable by United States Magistrate Judges, except for petty offenses as defined in the

Federal criminal code. 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.

\*The term "person" shall be interpreted to include any business or corporate type entity as well as natural persons.

## **2. Priorities in Scheduling Criminal Cases**

Preference shall be given to criminal proceedings as 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 as defined in section 5 should be given preference over other criminal cases.

## **3. 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 30 days of arrest or service.

**(b) Measurement of Time Periods.** If a person has not been arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

## **(c) 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) 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 Trial Must Commence**

**(a) Time Limits.** The trial of a defendant shall commence not later than 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 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.

**(b) Retrial.** 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, it shall commence at the earliest practicable time but, in any event, not later than 70 days after the finality of such order. When the defendant is to be retried following an appeal or collateral attack, if unavailability of witnesses or other factors resulting from passage of time shall make trial within 70 days impractical, the Court trying the case may extend such period for a total not to exceed 180 days from the date on which the order occasioning the retrial becomes final.

**(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.

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, but earlier action may, in fact, be required if the time limit for commencement of trial is to be satisfied.

**(e) Measurement of Time Periods.** For the purposes 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 Fed. R. Crim. P. 20, 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 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 or her rights under this Plan and pertinent legislation.

(2) The Court shall have sole responsibility for setting cases for trial after consultation with counsel. 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.

(3) 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. 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.

(4) In the event that a 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.

(5) At the time of the filing of a complaint, indictment, or information described in the preceding Section 4(f)(4), the United States Attorney shall note on the cover sheet if the new charge is for the same offense charged in the original indictment or information, or for an offense required to be joined therewith.

(6) At the time of the filing of a complaint, indictment, or information described in Section 4(f)(4), the United States Attorney shall give written notice to the Court of that circumstance and of his or her position with respect to the computation of the time limits.

(7) 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.

(8) A defendant contending that the time within which trial should have commenced has passed, must move for dismissal as provided in 18 U.S.C. §3162(a)(2) not less than 10 days before the scheduled trial date, unless the time within which trial should have commenced expires less than 10 days prior to the scheduled trial date, in which event the motion for dismissal must be made no later than the date defendant avers the trial should have commenced. Failure of the defendant to so move shall constitute a waiver of the rights set forth in 18 U.S.C. §3162(a)(2), unless the Court, for good cause shown, permits the motion to be made and heard at a later date.

(9) Except for good cause shown, the Court may not extend the time for filing motions after plea under Fed. R. Crim. P. 12(c) beyond 10 days. Such motions will be heard and ruled upon promptly, so that the trial need not be delayed.

### **5. Defendants in Custody and High-Risk Defendants**

**(a) Time Limits.** Notwithstanding any longer time periods that may be permitted under Sections 3 and 4, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(2) The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk.

**(b) Definition of "High-Risk Defendant."** A high-risk defendant is one reasonably 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 he or she is 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 Fed. R. Crim. P. 20 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 4(e)(3) and 4(e)(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 by him or her 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 that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his or her counsel but shall not be made known to other persons without the permission of the Court.

### **6. Exclusion of Time From Computations**

**(a) Applicability.** In computing any time limit under Sections 3, 4 or 5, the periods of delay set forth in 18 U.S.C. §3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under Section 7. In determining excludable time under 18 U.S.C. §3161(h)(1)(F), 90 days will be the maximum time excluded, unless the Court orders a hearing on the motion or additional extensions of time for filing briefs are specifically allowed by the Court. If the Court orders a hearing on the motion or additional extensions of time for filing briefs are allowed, the time consumed thereby shall be excluded only if the Court makes a specific and approximately contemporaneous determination that such delays are reasonably necessary to make the motion ready for judicial determination.

**(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, verifiable information received from any Federal criminal justice agency, the Court and/or the Magistrate Judge with respect to excludable periods of time for each criminal defendant. In any removal of a defendant from this District to another, under Fed. R. Crim. P. 40, the Magistrate Judge shall initially determine the amount of excludable time accrued from the time of arrest to the signing of the warrant of removal. This information shall be transmitted by the Clerk to the clerk of the transferee district. 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 on the criminal cover sheet appended to the indictment or information.

**(c) Stipulations.**

(1) The attorney for the Government and counsel for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time. The word "docket" for the purposes of this provision shall include all or any part of the docket assembly form issued by the Administrative Office of the United States Courts and is not limited to the proceedings' docket sheet.

(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 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 3, he or she 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), he or she 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. 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 each appearance of counsel before the Court, counsel shall examine the Clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate attention any claim that the Clerk's record is in any way incorrect.

(2) In the event that the Court continues a trial beyond the time limit set forth in Section 4 or 5, 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, 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.

**(f) Motions.**

Any motion filed prior to commencement of trial involving issues relating to the Speedy Trial Act of 1974, 18 U.S.C. §3161 *et seq.*, or this Plan, including but not limited to determinations of excludable time under §3161(h), shall state concisely the movant's position and be accompanied by a brief prepared in accordance with the Local Criminal Rules of the Court.

**7. 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 4(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. The Court will, in all cases, schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances.

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

**(a) Time Limit.** A defendant shall ordinarily be sentenced within 90 days of the date of his or her conviction or plea of guilty or *nolo contendere*. The Court shall set a date for sentence at the time of defendant's conviction or plea of guilty or *nolo contendere*.

**(b) Related Procedures.** If the defendant and his or her counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or *nolo contendere* or a conviction. The time during the pendency of the presentence investigation may be excludable pursuant to 18 U.S.C. §3161(h)(8) upon such finding by the Court.

**9. 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 upon which such detention was begun, as provided in 18 U.S.C. §5036.

**(b) Time for 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).

**10. Sanctions**

**(a) Dismissal or Release From Custody.** Failure to comply with the requirements of Title 1 of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or her 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.

**(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 he or she knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which he or she knows to be false and which is material to the granting of 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.

#### **11. Monitoring Compliance With Time Limits**

**(a) 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 Chief Judge on the status of the criminal docket within the District with specific emphasis upon (1) each case in which there is a failure to comply with any time limit set forth herein, and (2) each case in which sanctions were imposed.

#### **(b) Responsibilities of United States Attorney.**

(1) 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. A conflict in schedules of Assistant United States Attorneys will not be grounds for a continuance or delayed setting except under circumstances approved by the Court and called to the Court's attention at the earliest practicable time.

(2) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a Federal, State or other institution, or an institution of another jurisdiction, he or she shall, pursuant to 18 U.S.C. §3161(j), promptly:

(i) Undertake to obtain the presence of the prisoner for plea and trial; or

(ii) When the Government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him or her to advise the prisoner of the detainer and to inform the prisoner of his or her rights under this Plan.

(3) If a defendant is being held in custody, either criminal or administrative, the United States Attorney shall be responsible for advising the Court, through notice to the Clerk, at the earliest practicable time of the date of the beginning of custody.

(4) The United States Attorney shall, within five days after the close of the reporting period, furnish each Judge, each Magistrate Judge, the Circuit Executive and the Clerk of the Court with a copy of the bi-weekly DJ-130 report of persons in custody. The report shall contain the docket number of the case, the name of the Judge or Magistrate Judge to whom the case has been assigned and a letter symbol of the vicinage to which the case is assigned, if known. The "reason for detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth in the Plan. As to all other criminal cases, the United States Attorney shall, on or before the fifth day of each month, furnish each Judge, each Magistrate Judge, the Circuit Executive and the Clerk of the Court with a report regarding each case in which the trial has not commenced within 60 days of the entering of the plea of not guilty. The report shall contain the docket number of the case, the name of the Judge or Magistrate Judge to whom the case has been assigned, the letter symbol of the vicinage to which the case is assigned and the reason for delay in the disposition of the case.

(5) The United States Attorney shall submit to each Judge and Magistrate Judge a separate report about each defendant in fugitive status assigned to that particular Judge or Magistrate Judge. The information shall set forth what efforts have been made, and are being made, to secure the presence of the fugitive defendant before the Court. If all logical leads have been reasonably pursued, it shall be sufficient that the



fugitive status has been entered in the National Crime Information Center (NCIC). These reports shall be submitted at six month intervals after the defendant enters fugitive status. The contents of each report shall be sealed by the Court.

**(c) Responsibilities of United States Marshal.**

(1) The United States Marshal shall make, to the Clerk of the Court, a written daily report to include:

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

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

(2) 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 or she is made aware of the arrest.

(3) When a defendant is to be transferred pursuant to Fed. R. Crim. P. 40, the United States Marshal shall arrange to have the defendant transferred to this District as promptly as possible notwithstanding the fact that the defendant may be en route on a day on which the Federal offices are closed.

**(d) Responsibilities of the Court.** The Court has sole responsibility for controlling cases on the trial calendar. Each Judge and Magistrate Judge will schedule criminal trials at such time as may be necessary to assure prompt disposition of criminal cases. If it appears to the Chief Judge that, due to calendar congestion, sickness or disability of a Judge, that a particular criminal trial will not commence within the time limits set forth herein, the Chief Judge may make such adjustments, including the reassignment of cases, in accordance with the Local Criminal Rules of this Court in order to insure compliance with the Act.

The United States Attorney shall be informed of any case in which his or her office appears to be responsible for unnecessary delay.

**12. Effective Dates**

(a) 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 Sections 10(a) and (c) of this Plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(b) If a defendant was arrested or served with a summons before July 1, 1979, 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 August 2, 1979, the time within which the trial must commence shall be determined under the Plan that was in effect at the time of such arraignment.

(d) If a defendant was in custody on August 2, 1979, solely because he or she was awaiting trial, the 90-day period under Section 5 shall be computed from that date.