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SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979

JUNE 13 (legislative day, MAY 21), 1979.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 961]

The Committee on the Judiciary, to which was referred the bill (S. 961) to amend the Speedy Trial Act of 1974, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Page 1, strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Speedy Trial Act Amendments Act of 1979".

SEC. 2. Section 3161(c) of title 18, United States Code, is amended to read as follows:

"(c)(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 seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

"(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.".

SEC. 3. (a) Section 3161(d) of that title is amended—

(1) by inserting "(1)" immediately after "(d)"; and

(2) by adding at the end the following new paragraph:

"(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The

periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.".

(b) Section 3161(e) is amended—

(1) by striking out "sixty" wherever it appears and inserting in lieu thereof "seventy"; and

(2) by adding at the end the following: "The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.".

SEC. 4. Section 3161(h)(1) of that title is amended to read as follows:

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

"(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

"(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

"(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

"(D) delay resulting from trial with respect to other charges against the defendant;

"(E) delay resulting from any interlocutory appeal;

"(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

"(G) 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;

"(H) 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 ten 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;

"(I) 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

"(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.".

SEC. 5. (a) Section 3161(h)(8)(B)(ii) of that title is amended to read as follows:

"(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.".

(b) Section 3161(h)(8)(B)(iii) of that title is amended to read as follows:

"(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.".

(c) Section 3161(h)(8)(B) of that title is further amended by adding at the end the following new clause:

"(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.".

SEC. 6. Section 3163(c) of that title is amended to read as follows:

"(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest

or summons, and all informations or indictments filed, on or after July 1, 1981.".

SEC. 7. Section 3164 of that title is amended—

(1) by amending the section heading to reads as follows:

"§ 3164. PERSONS DETAINED OR DESIGNATED AS BEING OF HIGH RISK";

(2) by amending subsection (a) to read as follows:

"(a) The trial or other disposition of cases involving—

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

"(2) 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."; and

(3) by amending subsection (b) to read as follows:

"(b) the trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety 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 section 3161(h) are excluded in computing the time limitation specified in this section.".

SEC. 8. Section 3165(e) of that title is amended—

(1) in paragraph (2), by striking out "subsequent" and inserting in lieu thereof "fifth", and

(2) by adding at the end the following:

"(3) Prior to the expiration of the sixty-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.".

SEC. 9. (a) Section 3166(b) of that title is amended—

(1) in paragraph (7), by striking out 'and" immediately after the semicolon;

(2) in paragraph (8), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.".

(b) Section 3166(c) of that title is amended—

(1) in paragraph (5), by striking out "and" immediately after the semicolon;

(2) in paragraph (6), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

"(B) the number of civil cases pending at the close of such period; and

"(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.".

(c) Section 3166 of that title is further amended by adding at the end the following new subsection:

"(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.".

(d) Section 3168(a) of that title is amended by striking out "a private attorney experienced in the defense of criminal cases in the district" and inserting in lieu thereof "two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district".

(e) Section 3167 of that title is amended—

(1) in subsection (b), by adding at the end the following: "Such reports shall also include the following:

"(1) The reasons why, in those cases not in compliance with the time limits of subsections (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

"(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

"(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

"(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

"(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3174 has not been made, the reason why such application has not been made.

"(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.";

(2) by adding at the end the following new subsection:

"(c) Not later than December 31, 1980, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

"(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

"(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

"(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

"(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

"(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.".

(f) Section 3170(a) of that title is amended in the first sentence—

(1) by striking out "and" after "process" and inserting in lieu thereof a comma;

(2) by inserting a comma after "limits";

(3) by inserting "continuous and permanent compliance with the" immediately before "objectives"; and

(4) by striking out "required by" and inserting in lieu thereof "described in".

SEC. 10. Section 3174 of that title is amended—

(1) by striking out the period after the first sentence in subsection (a) and inserting in lieu thereof the following: "as provided in subsection (b).";

(2) by striking the first two sentences of subsection (b) and inserting the following in lieu thereof: "If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period.";

(3) by striking out "arrangement" in the third sentence of subsection (b) and inserting in lieu thereof "arraignment";

(4) by amending subsection (c) to read as follows:

"(c)(1) If, prior to July 1, 1981, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degreee of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

"(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.";

(5) by adding at the end the following:

"(d)(1) The approval of any application made pursuant to subsections (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

"(2) The Director of the Administrative Office of the United States Courts shall forthwith transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress.

"(3) If the judicial council concludes that an additional period of suspension within such six-month period is necessary, it shall report that conclusion to the Judicial Conference of the United States, together with the application from the district court for such additional period of suspension and any other pertinent information. If the Judicial Conference agrees that such additional period of suspension is necessary, it may request the consent of the Congress thereto. If the Congress fails to act on any such request within six months, the suspension may be granted for an additional period not to exceed one year.

"(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a)."; and

(6) by amending the section heading to read as follows:

"§ 3174. JUDICIAL EMERGENCY AND IMPLEMENTATION".

SEC. 11. (a) The item relating to section 3164 in the table of sections for chapter 208 of such title is amended to read as follows:

"3164. Interim limits.".

(b) The item relating to section 3174 in the table of sections for chapter 208 of such title is amended to read as follows:

"3174. Judicial emergency and implementation.".

SEC. 12. The amendments made by this Act shall take effect on July 1, 1979.

I. BACKGROUND

Four and one-half years ago, the Congress enacted the Speedy Trial Act of 1974, (hereinafter "The Act") which was approved by then-President Ford on January 3, 1975. The Act's passage represented

the culmination of four years' study, debate and refinement by this Committee—principally through former Senators Ervin and Hruska, the late Senator McClellan and Senator Thurmond—and extensive consultation with the Federal Judiciary, the Department of Justice, the American Bar Association and a host of others vitally concerned with the administration of Federal criminal justice. It passed both Houses with overwhelming bipartisan support.

In the main, the Act is the first embodiment with force of national law to quantify, balance and implement the various guarantees implicit in the command of the Sixth Amendment which provides that, "(i)n all criminal prosecutors, the accused shall enjoy the right to a speedy and public trial . . ." While it is obvious that that right accrues naturally to a criminal defendant, the Supreme Court observed, seventy-five years ago, that the guarantee protects society as well, although those interests may sometimes be at odds. As is the case with all other individual rights conferred by the Constitution, the right to speedy trial can be invoked—or waived—only by the person seeking its protection. Practically speaking, in a memory dependent system, it may better serve the defendant's interest in avoiding conviction to create unreasonable delay. The ramifications are highly prejudicial to the public interest. Not only does the individual escape accountability and punishment for his or her illegal act, but, more importantly, any potential deterrent value resulting from punishment is lost, the danger of recidivism (both awaiting and after trial) is increased and confidence in the fairness and administration of criminal justice is undermined.

Alarming increases in Federal and State court backlogs through the Nineteen-sixties and the Federal courts' professed inability to gauge the constitutional implications of competing speedy trial interests other than on a case-by-case basis made the need for an extrajudicial solution apparent. The American Bar Association issued its "Standards Relating to Speedy Trial" in 1968 as a legislative model for codifying, balancing and applying in normal practice the several Sixth Amendment speedy trial guarantees. On July 5, 1971, the United States Court of Appeals for the Second Circuit implemented its own "Rules Regarding Prompt Disposition of Criminal Cases," which drew heavily upon the ABA Guidelines. Similarly, the Judicial Conference of the United States promulgated Rule 50(b) of the Federal Rules of Criminal Procedure, requiring all district courts to prepare and adopt plans for the prompt disposition of criminal cases and conduct continuing studies of the administration of criminal justice, which became effective October 1, 1972.

Congressional scrutiny of these alternative proposals revealed a fundamental weakness in each and pointed the way toward a legislative solution to the problems exposed by them. The ABA Guidelines were, for the most part, ignored by State and Federal courts. The existence of several loopholes in the Second Circuit's rules led to conflicting interpretations and results. Lack of incentives to promote uniformity of implementation and enforcement of new Federal Rule 50(b) led to inconsistent plans and rules in the districts which did little more than encourage "the perpetuation of the status quo."

The Act builds upon the lessons of those earlier efforts. It reflects the legislative judgment that to insure that the societal interest in

prompt administration of justice not be subordinated to less important, systemic concerns is to require, as a matter of law, that criminal cases be tried within a fixed period coupled with meaningful penalties for failure to do so. Consequently, the Act combines fixed time periods and sanctions with provisions which afford the flexibility to handle both the unusual case or other practical problems certain to arise during the temporary and permanent implementation of its primary policies. Together, these may be summarized as follows:

TIME LIMITS [§ 3161(b), (c)]

As enacted, the permanent time provisions, which will take effect on July 1, 1979 require that a defendant be indicated within thirty days of arrest or service of summons, that the defendant be arraigned within ten days of indictment, and that, when a plea of not guilty is entered, the defendant be tried within sixty days of arraignment. If indictment precedes arrest, the ten-day period to arraingnment does not begin until the defendant's first appearance before a judicial officer in the district within which he is to be tried. These time limits, like those of greater duration contained in pre-act formulations described above, commence whether or not the defendant demands a trial but, unlike them, the Act also mandates that the trial be scheduled "at the earliest practicable time . . . so as to assure a speedy trial.

Taken together, the "day certain" scheduling requirement and "starting the clock" at identifiable points in the criminal justice process, whether or not the defendant demands trial, reflect the importance attached by Congress to the enforcement of the public's and the defendant's—right to speedy trials. Despite criticism that they are arbitrary and unrealistic, the permanent time limits are based on evidence presented to the Congress that the likelihood of further criminal activity by defendants on pretrial release increased significantly if not tried within sixty days. Moreover, contemporary studies concluded that faster and more efficient criminal processing would increase the deterrent effect on the law, aid rehabilitation of convicted offenders and reduce crime.

At the time passage of the Act was under consideration in the Congress, there also existed significant evidence that the Federal judiciary saw merit in, and supported, speedy disposition of the American Bar Association in August, 1970, Mr. Chief Justice Berger stated:

> If ever the law is to have genuine deterrent effect on the criminal conduct giving us immediate concern, we must make some drastic changes. The most simple and obvious remedy is to give the courts the manpower and tools—including the prosecutors and defense lawyers—to try criminal cases within sixty days after indictment * * * I predict it would sharply reduce the crime rate.

In testimony before the House Subcommittee on Crime in September of 1974, the Honorable Alfonso J. Zirpoli, a judge of the United States District Court for the Northern District of California and Chairman of the Committee on the Administration of the Criminal Law of the Judicial Conference, commented on the potential impact of the ultimate time limits:

> * * * At the outset, I emphasize that the time limits provided in (the Senate bill) from arrest to indictment and indictment to trial for Federal criminal defendants are entirely acceptable to the Federal judiciary and give us no particular concern. For we are confident that long before the 7-year phase-in period covered by the bill, we of the Federal judiciary will have achieved all of its present objectives under present procedures and in particular, the District Court plans adopted pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure, and that absent dramatic and unforeseen increases in Federal crimes, this can be accomplished whether we do or do not receive additional resources, personnel, and facilities which (the bill) would mandate.

The final time limits are not totally inflexible. If an individual is charged with a felony in a district in which no grand jury has been in session during the thirty-day arrest-indictment period, the time for filing of the indictment is extended automatically to sixty days. Furthermore, the Act provides that specific periods of time may be excluded from the limits, e.g. hearings on pre-trial motions. (See discussion below.)

SANCTIONS [§ 3162]

In its speedy trial guidelines issued eleven years ago, the American Bar Association recommended that failure to bring a defendant to trial within a fixed period, less excludable delays, should result in absolute discharge, forever barring prosecution for the offense charged and for any other offense required to be joined with that offense. In its accompanying commentary, the ABA stated:

> The position taken here is that the only effective remedy for denial of speedy trial is absolute and complete discharge. If, following undue delay in going to trial, the prosecution is free to commence prosecution gain for the same offence [sic], subject only to the running of the statute of limitations, the right to speedy trial is largely meaningless. Prosecutors who are free to commence another prosecution later have not been deterred from undue delay.

The Department of Justice's initial position on severe sanctions to make the societal interest in speedy trial enforceable in a meaningful way was similar and well-stated by then-Assistant Attorney General William H. Rehnquist to this Committee in 1971:

> None of us interested in the administration of criminal justice, Mr. Chairman, whether inside or outside of the Government, whether within or without the bench and bar, can fail to be struck by the stark fact of intolerable delays in our system of administering criminal justice. The Department is of the view that some of the root causes of this unjustifiable delay may be sought out, identified, and dealt with, regardless of whether the solution for any particular facet of the problem tends to bear more heavily on one side of the criminal justice than the other.
>
> Therefore, we are unwilling to categorically oppose the mandatory dismissal provision. For it may well be Mr. Chair-

> man, that the whole system of Federal justice needs to be shaken by the scruff of its neck, and brought up short with a relatively peremptory instruction to prosecutors, defense counsel and judges alike that criminal cases must be tried within a particular period of time. That is certainly the import of the mandatory dismissal provisions of your bill.

Thus, the Act provides that, once the ultimate time limits become effective on July 1, 1979, if a defendant is not indicated or tired within the specified period, tolled by excludable delays, infra, the court must, upon timely motion, dismiss either the charges or the indictment. In addition, to simultaneously protect the individual and societal rights to speedy trial, the court is afforded discretionary authority to punish counsel for intentional delay by levying fines.

Just as the time limits themselves are not without flexibility, the Act's sanctions provisions are fashioned to avoid unintended results. First, the defendant bears the affirmative burden of making a timely and proper motion for dismissal. Failure to do so constitutes waiver of the right thus buttressing the public's interest while protecting the individual's constitutional guarantee. Second, whether the charges or indictment are to be dismissed with prejudice (forever barring reprosecution), is within the discretion of the court, which must consider relevant factors before making such a decision, including the seriousness of the offense, the facts and circumstances causing the delay, the impact of reprosecution on the administration of the Act, and justice in general. Thus, despite the fact that both this Committee and the House Committee on the Judiciary recommended dismissal sanctions of greater severity, the Congress acceded to the position advanced by the Department of Justice that society's interests would be better served by assuring that the prospect of leaving serious criminal conduct unpunished for the sake of speed alone would not occur.

AUTOMATICALLY EXCLUDABLE DELAY [§ 3161(h)(1-7)]

Just as it concluded that the speedy trial protections afforded both the individual and society by the Sixth Amendment were largely meaningless without fixed time limits, the Congress also saw the need to build into those fixed limits sufficient flexibility to make compliance with them a realistic goal. In computing the time within which an information or indictment must be filed or the time within which a trial must commence, the Act excludes from either computation specific and recurring periods of time often found in criminal cases. These include periods consumed by:

(1) proceedings concerning the defendant, including mental or physical examinations, other trials, interlocutory appeals and pretrial motions (it would indeed be anomalous to permit the defendant to benefit from delay property undertaken to protect his interests in a fair adjudication of the charges against him by allowing dismissal without exclusion of that time);

(2) agreements to defer prosecution, since such agreements, properly entered into, advanced the various interests which the Act seeks to protect;

(3) the absence or unavailability of the defendant or of a witness essential to either the defendant or the Government;

(4) the defendant's inability to stand trial, resulting either from mental incompetence or physical disability;

(5) treatment of the defendant under the Narcotic Addict Rehabilitation Act;

(6) dismissal by the Government of an indictment or information and subsequent entry of the same charge, or a charge required by the constitutional doctrine of double jeopardy to be joined with it, against the same defendant (just as the defendant should not profit from delay he can create for his own tactical advantage, neither should the Government); and

(7) reasonable 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, so as not to alter the traditional rules governing severance.

Thus, the Congress, with the active cooperation of the Department of Justice and other interested parties, made a conscientious effort to set forth with reasonable particularity the types of delay which, it hoped, would be excluded as a matter of practice consistent with the objectives to be served by the Act. Modifications made to serve that end were substantial following the introduction of the Act's legislative predecessors. Yet, by the same token, both this Committee and its House counterpart took pains to forestall the possibility that a desire to be instructively particular not be misinterpreted as exclusively inflexible. For example, this Committee, in commenting upon the types of delay automatically excluded under § 3161(h)(1), stated:

> At the suggestion of the Justice Department, the committee has enumerated in the text of the bill examples of what is meant by "proceedings concerning the defendant." The list is not intended to be exhaustive. It is representative of procedures of which a defendant might ligitimately seek to take advantage for the purpose of pursuing his defense.

DELAYS TO SERVE THE "ENDS OF JUSTICE" [§ 3161(h)(8)]

Congress' concern that the overall goal of giving the speedy trial right practical meaning not be destroyed by inflexibility did not end with the specified "exclusions" described above.

In addition, Congress gave the trial court the discretion either on motion of either party or sua sponte, to exclude reasonable periods of delay by granting a continuance, "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." Termed by this Committee "the heart of the speedy trial scheme created by the Act, such continuances may be granted and that time excluded if the judge finds, either orally or in writing, that the existence or occurrence of factors peculiar to a given case require delay and that the ends of justice served thereby override both the public's and the defendant's speedy trial interest. Factors to be considered under the Act, "among others," include:

(1) Whether failure to grant a continuance would likely make continuation of the proceeding impossible, or result in a miscarriage of justice.

(2) whether the case, taken as a whole, is so unusual and so complex, for any of a variety of reasons, that it is unusual to expect adequate preparation within the time limits.

(3) whether, where arrest precedes indictment, delay after the grand jury proceedings have commenced is caused by the unusual complexity of the factual determination to be made or other events beyond the control of the court or the Government.

Again, considerable effort was expended during the Act's genesis to aggressively promote speedy trial goals without thwarting the ability of the Federal criminal justice system to serve the needs of justice on a case-by-case basis. Vague formulas were abandoned in favor of the more instructive statutory examples where continuances could be granted legitimately. At the same time, delay resulting from factors attributable to institutional lethargy—general calendar congestion, lack of diligent preparation, or failure of the Government to obtain available witnesses—is made specifically nonexcludable by discretionary continuance.

After citing numerous examples of occurrences which would support the entry of a proper "ends of justice" continuance, this Committee stated:

> However, as a general matter the Committee intends that, except for the above situations, this provision should be rarely used. Furthermore, even the above situations should be handled on a case-by-case basis with the court stating in writing the reasons why it believes that granting the continuance strikes the proper balance between the ends of justice on the one hand and the interest of society in a speedy trial and the interest of the defendant in a speedy trial on the other.

PHASE-IN [§3161(f), (g)]

To promote an orderly and, from all available evidence, suitable transition from the date of enactment to the date upon which the Act's final time limits and sanctions were to become effective, the Congress established a four-year "phase-in" period. The "phase-in" was designed to mesh with the passage of then-fiscal years and the calendar used by the Administrative Office of the United States Courts for the collection and compilation of year-end criminal case disposition data. During the first "phase-in" year, no fixed time limits became effective, other than those governing the trial of detainees awaiting trial and persons designated by the attorney for the Government as being "high risk", infra. This initial period, beginning July 1, 1975, and ending June 30, 1976, was set aside to give each Federal district maximum time to initiate and become experienced in the planning process set forth in the Act which the Congress believed would best enable them to prepare for final implementation, infra. Beginning on July 1, 1976, time limits for the second "phase-in" year went into effect: sixty days between arrest and indictment ten days between indictment and arraignment and one hundred-eighty days between arraignment and trial. These initial limits remained in effect until

June 30, 1977. Reduced intervals of forty-five, ten, and one hundred-twenty days, respectively, took effect for the period July 1, 1977–June 30, 1978. The fourth and final "phase-in" period—thirty-five, ten and eighty days, respectively—went into effect July 1, 1978. Throughout the entire period, no sanctions were imposed for failure by any district to observe any of the time intervals in any given year, except with respect to pretrial detainees and high-risk defendants.

INTERIM LIMITS [§ 3164]

To provide all districts some minimum speedy trial experience soon after enactment and throughout the "phase-in" period, and to encourage swift action to attain the objective of reducing recidivism the Act required all districts to prepare and implement by September 30, 1975, special "interim" plans for detained defendants and "high-risk" defendants released and awaiting trial. These plans require trial within ninety days for all detained persons and all defendants released and awaiting trial who had been designated by the attorney for the Government as being of "high risk." Rather than mandating the more severe remedy of dismissal in such cases, the sanctions to be imposed were pretrial release, in the case of detainees, and automatic review of release conditions, in the case of high-risk defendants. Under the terms of the Act, these interim plans, limits and sanctions will expire on June 30, 1979.

PLANNING, REPORTS, DATA COLLECTION AND IDENTIFICATION OF RESOURCES [§ 3165–70]

To encourage smooth and uniform implementation of the Act's final time limits and sanctions the Act required each district to convene a speedy trial planning group, the primary purpose of which was to prepare and submit to the Administrative Office plans for the implementation of the interim and final time limits. The planning provisions require system-wide cooperation—from the planning groups, convened and appointed in each district by the chief judge to represent the broadest possible spectrum of expertise and opinion. The planning groups through the judicial councils of each circuit and the Judicial Conference, with technical assistance from the Administrative Office and the Federal Judicial Center not only planned for the Act's final implementation but are also charged with continuous study of the administration of criminal justice in each district. They also identified and recommended possible solutions, to basic problems in the administration of criminal justice, whether arising under or affected by the Act. Commenting on the importance of the planning-implementation phase of the Act, the report of the House Committee said:

> The heart of the speedy trial/concept embodied in (the Act) is the planning process. The provisions recognize the fact that the Congress—by merely imposing uniform time limits for the disposition of criminal cases, without providing the mechanism for increasing the resources of the courts and helping to initiative criminal justice reform which would increase the efficiency of the system—is making a hollow

> promise out of the Sixth Amendment. The primary purpose of the planning process is to monitor the ability of the courts to meet the time limits of the bill and to supply the Congress with information concerning the effects of criminal justice administration of the time limits and sanctions, including the effects on the prosecution, the defense, the courts and the correctional process, and the need for additional rule changes and statutes which would operate to make speedy trial a reality.

The focal point of the planning process is the requirement for uniform data collection. The clerk of each district court was obliged to begin compiling, under the direction of the Administrative Office, information and statistics spelled out by the Act to enable the planning group to fulfill its responsibilities during the implementation period. In addition, the data was to be made available to all elements of the system, including the Administrative Office, to aid in the reporting and recommendation function, especially the establishment of "uniform national reporting standards."

Besides initiating a continuing study on the administration of criminal justice in the district, each planning group was required to prepare and submit a plan for the disposition of cases during the second and third "phase-in" years by June 30, 1976, and another for the fourth and subsequent years, following the effective data of the final time limits and the dismissal sanction, by June 30, 1978. Obviously, the chief objective of the process was the acceleration of the disposition of criminal case in each district, consistent with the Act's interim timetable. Other major benchmarks are set forth as well which are indicative of the Congress' desire to promote flexible but uniform interpretation:

> * * * The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

Pursuant to the annual reporting requirements contained in the planning provisions, the Administrative Office has been engaged in supervising the collection and compilation of speedy trial data in the districts, the receipt and dissemination of district plans and recommendations to the Congress, made by the planning groups, the Judicial Conference and the Director himself, for "rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in (each) district which cannot be accomplished without such amendments or funds."

JUDICIAL EMERGENCY [§ 3174]

To lessen the potential impact of the Act in districts having difficulty in meeting the Act's ultimate time limits, because of court congestion or otherwise, and to prevent the havoc that unforeseen emergencies might cause upon districts where no alternative solutions could be found, the Act includes provisions which permit the chief judges of a district to apply to the Judicial Conference, through the circuit coun-

cil, for a suspension of the final arraignment-to-trial time limits for up to one year. If the Conference approves the application, the time for trial may be enlarged up to one hundred-eighty days, with the arrest-to-indictment limit for all cases, the time limit for trial to detainees and the sanctions remaining in effect. Furthermore, an additional one-year suspension may be made available, provided that certain statutorily-specified events occur.

SIXTH AMENDMENT RIGHTS [§ 3173]

Finally, the Act specifies that no provision in it is to be interpreted as a bar to a claim by a defendant that his or her rights to speedy trial under the Sixth Amendment have been violated. This Committee made its intent plain in reporting the bill:

> * * * [W]hile this bill would be an exercise of Congress' power to implement the Sixth Amendment, it is not intended to be, and obviously could not be, a conclusive interpretation precluding the courts from going beyond Congress if they found (that) the Sixth Amendment's speedy trial provision so required. Similarly, the courts, in interpreting the Sixth Amendment, could strike down a provision of this Act because in its [sic] view, the Sixth Amendment did not require it. * * * Congress may not do less than the Constitution requires, but it may do more.

II. The Need for Amendment

If general data generated by the Act's collection and reporting requirements and other more recent analyses of such data are to be believed, the prognosis for substantial compliance with the Act's final time limits is good. Available data indicates that most districts predict that they will be able to achieve substantial compliance with the permanent limits; in over 90 percent of the cases, the courts have been able to operate within the transitional time limits. A recent study conducted by the Office for Improvements in the Administration of Justice of the Department of Justice (OIAJ) found that the overall compliance rate in cases disposed of in the court year ending June 30, 1978, with the final time limits of the Act was 93 percent nationally—82 percent of those cases were brought to indictment from arrest within 30 days, 90 percent to arraignment from indictment within 10 days and 81 percent to trial from arraignment within 60 days; that is, four out of five cases terminated before June 30, 1978, were incompliance with the permanent strictures due to go into effect on July 1. Nine districts examined in detail showed similar compliance rates.

Reviewing the same national data, the General Accounting Office noted significant improvements in percentage-compliance rates with the final time limits by comparing the 1976–77 court year with the most recent one; the compliance rate increased from 78.8 to 82.5 percent in the first time interval, from 87.2 to 90.4 percent in the second and from 75 to 81.4 percent in the third. As of July 1, 1977, twenty of the ninety-five Federal districts elected to implement the Act's final time limits; eighteen of those districts have completed more than 80 percent of their criminal cases within the final time interval of 60 days, and the rate of completion for eleven of those is between 95 and 100

percent. Conversely, that means that districts still operating under the third-year, transitional "phase-in" limit achieved reasonably high rates of compliance with the final time limits.

In its third report on implementation of the Act, the Administrative Office concluded that it has had salutary effects on the administration of criminal justice in general, including:

> More rapid disposition of criminal cases and a decrease in the criminal case backlog;
>
> More efficient administrative procedures and improved cooperation and planning between the courts, United States Attorneys, clerks' offices and defense counsel;
>
> Improved quality of justice in general;
>
> Witnesses' memories remaining fresh and witnesses being more available; and
>
> A greater association between punishment meted out and the crime, if the defendant is convicted.

Despite these general indications that substantial compliance would be forthcoming once the final time limits and the dismissal sanction became effective, both the Department of Justice and the Federal Judiciary have petitioned the Congress to make substantial changes in the Act prior to that time. In September, 1977, and again last year, the Judicial Conference endorsed the general recommendations of its Ad Hoc Subcommittee on Speedy Trial, to, among other things, enlarge the final time limits. Later this spring, the Attorney General transmitted to this Committee on Executive Communication and draft legislation, also urging expansion of the time limits and several other amendments. In his accompanying letter, the Attorney General stated:

> The phase-in period for the Act has been monitored by the Administrative Office of the U.S. Courts, and the results of that monitoring have been reported to the Congress. Also, the Department of Justice recently has completed an intensive study of delays in the processing of criminal cases under the Act in nine representative judicial districts.
>
> The data contained in the reports of the Administrative Office and the Department of Justice indicate that, if current levels of compliance with the Act are maintained, a significant number of dismissals can be expected when the final time limits take effect on July 1, 1979. Specifically, dismissals could occur in as many as 17 percent of criminal cases filed; in 1978, this percentage represented 5,174 cases.

Similarly, at its semiannual meeting last month, the Conference of Metropolitan Chief Judges unanimously urged the adoption of the Judicial Conference's proposed amendments, declaring:

> * * * If the Act is not amended, the results will be the release of some untold number of criminal defendants prior to any judicial determination of their guilt for the offenses for which they are charged.

Last week, the Board of Governors of the American Bar Association endorsed earlier recommendations of the Section on Criminal Law, also calling for, inter alia, enlargement of the ultimate time limits.

In view of these proposals and the seriousness of allegations accompanying them of the preemptory effect final implementation of the Act would have on the administration of Federal criminal justice, the Chairman of this Committee introduced by request, both the Department's bill, S. 961, on April 10, and the Conference's proposal, S. 1028. On April 26th Committee hearings were scheduled and chaired by Senator Biden, Chairman of the Subcommittee on Criminal Justice. On May 2, testimony was taken from Allen R. Voss, Director, General Government Division, General Accounting Office; Philip B. Heymann, Assistant Attorney General, Criminal Division, Department of Justice; and the Honorable Alexander Harvey, II, Judge, United States District Court for the District of Maryland and Chairman, Committee on the Administration of the Criminal Law, Judicial Conference of the United States. On May 10, the Committee heard Daniel J. Freed, Esq., Professor of Law, Yale Law School; John D. Cleary, Executive Director, Federal Defenders of San Diego, Inc., and Legislative Chairman, Defender Commission, National Legal Aid and Defender Association; David Isbell, Esq., Covington & Burling, Washington, D.C. representing the American Civil Liberties Union; Salvatore Martoche, National Association of Criminal Defense Lawyers; the Honorable Robert F. Peckham, Judge, United States District Court for the Northern District of California; and the Honorable Robert J. Ward, Judge, United States District Court for the Southern District of New York.

After analyzing the available evidence and data and carefully weighing the testimony of both proponents and opponents of change, this Committee concludes that a case cannot, at present, be made for a fundamental policy change in the Act by an enlargement of the time limits. Too little has been learned about the potential impact of the Act's permanent provisions to predict with certainty that those time limits will be injurious to the Federal criminal justice system in particular or the administration of justice in general. For precisely that reason, however, this Committee also finds that more and better experience under the Act's final time limits, without system-wide penalty, is needed to determine whether the basic goals of the Act and the means to implement them need to be altered in any way. Therefore, the Committee amendment incorporates a two-year deferral, from July 1 of this year to July 1, 1981 of the final implementation of the dismissal sanction.

To derive maximum benefit from such experience, this Committee further believes that several amendments of demonstrated necessity must be made at this time to clarify and strengthen existing provisions. The changes in the Act made by the Committee amendment in the nature of a substitute to S. 961, and their intended effect, are set forth more fully in the following section of this report. Set forth below is a discussion of the broader issues presented for consideration by this Committee.

III. Issues Presented

IMPACT OF THE TIME LIMITS AND DISMISSAL SANCTION

The contention of the Department and some Federal judges that available data supports a forecast of significant dismissals of criminal

cases must be weighed carefully and critically. At the outset, it should be noted that the only data available for study, used both by the Department and the General Accounting Office in their respective studies, is now nearly a year old and was gathered in a period during which longer transitional time limits were in effect with no sanction imposed for exceeding them. In its analysis, the General Accounting Office sampled in detail the characteristics of each of 393 cases terminated in eight districts during the period ending June 30, 1977, in which court statistics showed that at least one of the three final time limits had been exceeded. The Office was told that in 103 of those cases, or 26 percent of the total, the ultimate time limits were not met simply because either the district was operating under longer transitional limits or the dismissal sanction was not in effect. Indeed, after reciting its dismissal projection, the Department's own study continues:

> Common sense indicates that such a level of dismissals will probably not in fact occur. Instead, it can be expected that, in response to the threat posed by the dismissal requirement, the work patterns of prosecutors and courts will adapt to the new situation, additional resources will be devoted to meeting the deadlines of the Act, and, in consequence, the dismissals will be held to a less drastic level.

Another disadvantage of making projections based on cases terminated prior to July 1, 1978 is that it is impossible to take into account the status of the criminal calendars and the implementation of the shorter, final "phase-in" time limits. When viewed against the backdrop of increased compliance rates in previous year and reductions of criminal case backlogs it is vital to know whether terminations and filings in criminal cases increased or decreased and, consequently, what reasons might be attributed to such fluctuations. Without such data, it is risky to assume that what will occur next month can be predicted on the basis of what, essentially, was planned for two years ago and which occurred approximately a year ago. The Committee declines to take such a step.

Two other points concerning the immediate effects of projected dismissals are worth mentioning. First, the Department's study identifies two important characteristics about most significant delays in noncompliance cases: only those cases involving drug-related offenses experienced significant delays, averaging forty days, and multidefendant cases experienced longer delays than single-defendant cases. Second, the prospect of dismissal without prejudice, and attendant opportunity to reinstitute prosecution, depends upon the court's consideration of the seriousness of the offense, among other factors, and whether an "ends of justice" continuance may be had to exclude delay depends in part upon the number of defendants. Not knowing the full availability of these "safety valves" in any given prosecution further complicates a determination of the likelihood of truly prejudicial dismissal, at least from the Government's and society's point of view.

EXCLUDABLE DELAYS

By urging the Committee to expand the basic time limits and retain only several, narrowly defined exclusions to be "strictly construed,"

the Department advocates a fundamental policy shift in the Act. The Judicial Conference does likewise by making the same request for expansion of the limits and preferring more general excludable delays, with "reasonable" periods to be fixed at the discretion of the court.

The Committee is troubled to find evidence which suggests that, not only is the Act being interpreted to deny it most of its inherent flexibility, it remains practically "noninterpreted."

The most instructive example arose during the course of the hearings. On May 2, to illustrate the need for an expanded arraignment-trial time period, Assistant Attorney General Heymann cited a recent Departmental case of admitted complexity which, only through extraordinary effort, was brought to trial in 95 days. He states: "The only relief is under Section 3161(h)(8)." On May 10, Judge Ward, Chairman of the circuit committee which drafted the Second Circuit's new Guidelines Under the Speedy Trial Act, approved January 16, 1979, took the example cited, applied the guidelines to the facts, and said:

> My arithmetic, for what it is worth, shows we used up 24 days. I may be a day off, but it is close. Subtract 24 from 60. By my example, using the 60-day arraignment to trial period, you have 36 days left within which that case would be tried with no need for the judge to make any (§ 3161) (h)(8) determination. And, therefore—it may sound strange—but the way I have figured it out, you would have 11 days more available than the 25 would have were the clock inexorably ticking.

The point of that example is that the principal actors in the Federal criminal justice system are, for a variety of reasons, interpreting those provisions of the Act in an unnecessarily inflexible manner. Analysis of data collected on the incidence of, and reasons for, excludable delays—required by the Act—reveals an inconsistency of both interpretation and application. In all criminal cases terminated as of June 30, 1978, the Administrative Office reported that no excludable time was found or recorded in 75.6 percent of those cases. The General Accounting Office, in its survey of cases terminated during the same period in eight specific districts which exceeding the ultimate time limits, found that 22 percent of those cases in fact met the time limits but were reported as exceeding them because allowable excludable time had not been computed or had been computed improperly. The Department of Justice reached the same conclusion:

> In this connection, the OIAJ study found repeated and marked inconsistencies in the way in which some of the exclusions are being interpreted and applied by the courts. In some districts, for example, more than half the incidents prompting the exclusion of processing time were attributable to hearing and deciding pretrial motions, while in other districts these events produced not one instance of excluded processing time. Similarly, in one district, 80 percent of the examined cases experienced at least one incident of excluded processing time, while in another district the figure was only 4 percent.

Data gathered on the use of "ends of justice" continuances, which, as noted above, this Committee considered "the heart of the speedy trial scheme," is particularly instructive. The Administrative Office reported that, during the last full court year, such continuances comprised 16.2 percent of all incidents of delay. Again, the findings of the Department are in accord:

> * * * On a national scale, this category accounts for approximately one-third of all incidents of excluded processing time. Yet, in one sample district it accounted for two-thirds of excluded incidents and, in another sample district, almost none.

For that same year, the General Accounting Office found that only 5.6 percent of the defendants whose cases were terminated were granted a continuance. In the eight districts it surveyed closely, which included four of the country's busiest criminal jurisdictions, defendants were granted continuances in only 1.5 percent of the cases. In two of those districts, the number of defendants granted continuances was less than 1 percent of the total.

Various explanations are for apparent underutilization of the Act's "safety-value" exclusions. The Department study provides one:

> While continuation of inconsistences of this sort after the Act becomes fully effective will make compliance in some districts extremely difficult, and thus increase the likelihood of dismissals, it seems likely that more uniform and more realistic applications of the exclusions will occur. As one trial judge reassuringly expressed it during an OIAJ interview, greater use of the excludable time provisions will be made "when it counts", i.e., when the consequences for non-compliance is dismissal.

Other explanations are much less reassuring. The staff of the Fordham Law Review undertook a detailed survey of experience under the Act in three adjoining metropolitan districts. They found that,

> (i)n spite of the flexible application of section 3161(h)(8) intended by Congress, approximately half of the judges interviewed in the three districts construed the provision narrowly. The explanations for this reticence to grant excludable continuances ranged from hostility toward the Act to unfamiliarity with its provisions. One judge, whose antipathy was obvious, reasoned that "the best way to get rid of a bad law is to enforce it strictly." Several judges noted that granting continuances increased their administrative burden because they only "rented time"; postponed trials must be squeezed into time slots that may already be overcrowded. Others, perhaps unaware of the flexibility intended by the drafters, feared criticism that they would subvert the congressional mandate of speed if they did not try every case within sixty days.

Whether isolated or more widespread, such interpretations are inconsistent with congressional intent as to the policy objectives of the Act. As the House Committee stated in its report:

> The Committee believes that both delay and haste in the processing of criminal cases must be avoided; neither of these

> tactics inures to the benefit of the defendant, the Government, the courts nor society. The word speedy does not, in the Committee's view, denote assembly-line justice, but efficiency in the processing of cases which is commensurate with due process.

Neither hostility toward the Act nor fear of the consequences is a justifiable basis for interpretation which is so strict as to deny the spirit of it as well as its letter in application. The Committee does find, however, that some provisions of the Act, particularly with respect to excludable delays, deserve legislative clarification consistant with recommendations of the Department, the Judicial Conference and the defense bar. Moreover, existing legislative history with respect to the meaning of the exclusionary provisions and the probable frequency of their application may be unduly harsh, as a result of an overabundance of caution on the Judiciary Committees' part in reaction to contemporary expressions of hostility toward the Act.

Accordingly, the Committee amendment makes changes in several excludable time and continuance provisions to meet legitimate concerns; these changes, and their intended meaning, are expressed and explained in the next section.

The Committee must stress, at this juncture, that no amendment short of repeal and no amount of interpretive language could conceivably meet every objection and solve every problem arising from the Act's application in a practical setting. To attempt to do so would so constrict the Act as to hamstring its inherent flexibility and defeat its principal aims as a consequence. While the Administrative Office has demonstrated diligence and good faith in its efforts to guide the districts toward a reasonable application of the Act in practice, the Committee finds that, too often, the Administrative Office has erred on the side of caution. The Second Circuit has interpreted the Act and its legislative history in a creative manner which preserves its objectives and specifically addresses most of the problems which have hindered its smooth implementation, as Judge Ward's example, supra, demonstrates. After careful reading, the Committee is of the opinion that the Second Circuit guidelines are worthy of consideration by all the districts as a model for future implementation, consistent with presently-contemplated changes. The Committee invites every circuit council and district chief judge to give them the closest attention possible.

COSTS OF COMPLIANCE

Troubling issues regarding possible collateral consequences if implementing the Act on schedule have been presented to this Committee which would be harmful to the administration of Federal criminal justice, exclusive of possible dismissals. If the thirty-day, arrest to indictment period is allowed to go into effect as enacted, the Department of Justice fears that fewer arrests of dangerous persons, fewer prosecutions of serious crimes and incomplete investigations will result. Should the second interval, indictment to arraignment, be allowed to go forward next month, judges, prosecutors and defense counsel fear that the resulting pressure will cause hastier and ineffective defense preparation prior to arraignment. Additional burdens of in-

creased travel time in more sparsely-populated districts is a concern of all parties. The Committee heard testimony that implementation of the arraignment to trial time limit of sixty days on July 1 would have an adverse effect on plea bargaining, judicial efficiency and defense preparation. Finally, it is alleged that full implementation of the Act next month will deal a crushing blow to already overcrowded civil calendars.

ARREST—INDICTMENT

Assistant Attorney General Heymann testified that, in the year concluding last June 30, the number of cases commenced by arrest compared to the previous year decreased by more than half, from 18,849 to 9,169. He charged this decrease to the effect that contemplated compliance with the Act is having on prosecutorial arrest policies. The Department fears that, if arrests are deferred to avoid "starting the clock" on the first time interval, persons who might otherwise be detained will remain at large to continue their criminal activity.

Analyzing Mr. Heymann's statement, Prof. Freed made two points. First, the year-end data compiled by the Administrative Office excludes any data on cases not terminated that year in its totals, meaning that any case commenced by arrest during that period, but not terminated during that year would not be reflected in interval data at all. Therefore, the data upon which Mr. Heymann relies on is not an accurate measure of changes in Justice Department arrest policy. Second, Prof. Freed argues that a more accurate picture of actual arrest reductions can only be had by comparing arrest-indictment ratios disclosed by a given annual data base. Comparing actual arrests and indictments occurring in the years ending June 30, 1977, and June 30, 1978, Professor Freed calculated that the arrest-indictment ratio for the former was 40 percent and, for the latter, 31 percent, showing a decline in arrests of 9 percent. Using completed data for prior years as a predictive base by assuming that arrest patterns disclosed by the ratio would be similar, he speculated that the true reduction in arrests would be closer to 2,600 in the latter year.

There are other reasons for doubting the allegation that the Act has undercut prosecution and arrest policy, besides the present inability to determine with statistical precision how the Act is truly affecting these policies. First, less than a third of all criminal cases in the Federal system are commenced by arrest and the existence of other factors affecting the decision to arrest a criminal suspect independent of the fear of noncompliance with the Act—leaving the courier on the streets to lead investigators to "higher-ups" in the criminal chain in a narcotics case, for example—make it difficult to attribute declining arrests solely to the Speedy Trial Act. Second, while the Act makes it clear that § 3161(h) excludable delays apply to the arrest-indictment period, the general reluctance of courts to interpret those exclusions flexibly, as described above, may also influence arrest policies during the first time interval. In the same year from which Mr. Heymann draws his figures, time was recorded and excluded in only 571 of 14,301 incidents—less than 4 percent. Indeed, it may be that because of such reluctance, prosecutors and defense counsel are not taking advantage of those exclusions during the first interval by requesting continuance where warranted.

A related question is whether United States Attorneys will forego prosecution of significant criminal cases by filing fewer indictments or informations in order to comply with the Act's final time limits. The Department contends that they will, pointing to a reduction in criminal filings of 13.4 percent in the year ended last June 30, as compared to the previous year. The Department's study, however, is less conclusive:

> The extent to which the Speedy Trial Act has contributed to the substantial decline in the number of federal prosecutions is difficult to determine. Although some planning groups have urged the local United States Attorney to be very selective in the criminal cases he brings in order to facilitate, through diminished volume, the expeditious handling of more serious offenses and more culpable offenders, the data analyzed by OIAJ do not suggest that declinations and compliance with the Act are closely related across all districts. While this does not negate the possibility that the Act has had some impact on declination policies, it does suggest that any such impact is not associated with higher levels of compliance with the time requirements of the Act.

The study found that districts with high declination rates achieve high levels of compliance with no greater frequency than those with lower declination rates; therefore, it concluded—

> changes in declination policies in response to the Act—that is, changes in the ratio of the volume of all criminal cases filed to all criminal matters received by United States Attorneys—may have little independent effect on district compliance levels and possible dismissal rates.

The fact that there has been a substantial shift in national priorities in Federal criminal prosecutions in the past several years may have a great, or greater, bearing on reduced criminal filings. Since late 1977, the Attorney General has attached highest priority to four types of Federal crimes—organized crime and racketeering, fraud, public corruption and narcotics and dangerous drugs. Guidelines have been drafted and disseminated to United States Attorneys and the resources and personnel of the Criminal Division have been redirected to concentrate on the investigation and prosecution of those crimes. United States Attorneys have been encouraged to convene Federal-State Enforcement Committees to set up mechanisms for referral of less important matters to State and local authorities for disposal. In further recognition of the Attorney General's priorities, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Immigration and Naturalization Service are shifting emphasis away from the investigation of matters which may be handled at the State and local level in favor of more serious interstate crime.

Whether or not these factors are influencing prosecutorial declination policies and, if so, how, cannot be established conclusively. However, in meetings between the committee staff and a representative sample of U.S. Attorneys selected by the Department of Justice the line prosecutors suggested that the Speedy Trial Act was not a significant factor. By October 1 of this year, the Department is required

to submit to this Committee a complete report on declinations in general. Presumably, the role the Act plays in influencing the policies of local United States Attorneys will be revealed more concretely then. Until that time, the Committee has no firm basis for reaching the conclusion that the Act is even marginally responsible for past reductions in criminal filings, particularly in view of the fact that the dismissal sanction has not yet taken effect.

The Justice Department also contends that the final arrest-indictment time limits will prejudice the ability of the Government to investigate the charges fully before the time runs. Careless or incomplete investigation can cause any one of three undesirable results: an otherwise innocent person could be indicted; a dangerous offender could be acquitted because of incomplete evidence, due to a hastily-returned indictment; or a dangerous suspect could be permitted to remain at liberty pending completion of a sufficient investigation.

In this case the Department's concern has been carefully documented and legislative relief is appropriate. The Department's study found the unavailability of investigative reports to be one of the three most significant causes of delay in the nine districts it surveyed, regardless of whether their compliance levels were low or high with the Act's time limits. The General Accounting Office found the same situation existed in the districts it studied, although it found in some cases that requests for priority processing had not been made. Although § 3161 (h) (8) (B) (iii) can arguably be extended to cover reasonable periods of delay during which reports from investigative agencies and evidentiary analyses from laboratories are completed and the Second Circuit has so interpreted it, the Committee recognizes that this question is a serious one.

Accordingly, the Committee's amendment clarifies that section's "ends of justice" continuance provisions to permit a court, in a case where arrest precedes indictment, to grant a continuance if it finds "that it is unreasonable to expect return and filing of the indictment" within the time limits, less other excludable delays.

INDICTMENT—ARRAIGNMENT

The genesis of the provision in the Act imposing a third time interval, besides arrest and indictment and indictment and trial, was an amendment suggested to the House Committee on the Judiciary by the Department of Justice. The Department's representatives contended at the time that, because a high percentage of criminal cases are disposed of by plea, it is an unwise and "extravagant use of judicial, defense, and prosecution resources to expend unnecessary scheduling and planning efforts for a trial until the defendant indicates that he desires a trial." The Department also felt that the date of arraignment would be the most logical point along the arrest-trial span to fix a date for trial.

The Department has testified that, in recognition of several unforeseen problems, it now recommends enlarging the indictment-trial interval by ten days and eliminating the indictment-arraignment period. That recommendation is also supported by the Judicial Conference and the American Bar Association.

Because the fixed indictment-arraignment period of ten days has indeed given rise to interpretive as well as practical problems, the Committee amendment eliminates it as a distinct period by merging the ten-day requirement with the time-to-trial period of sixty days. In the first place, although § 3161(c) was in fact amended to establish the third interval, corresponding changes to § 3161(h) (excludable delays) and § 3162 (sanctions) were not, and the legislative history is in conflict. Thus, the Second Circuit's guidelines conclude that there is no penalty intended if the defendant is not arraigned within ten days of indictment. The Administrative Office—which issues advisory guidelines to the districts—has apparently taken the opposite position.

Since, logically, the Congress would have defeated its own attempts to make the Act flexible by imposing the penalty of dismissal if the limit was not complied with without the benefit of exclusions where necessary, the Committee is constrained to agree with the commentator who attributed this inconsistency to "a last-minute drafting error." Furthermore, the practical consequences of observing the ten-day period without benefit of excludable delay would outweigh any measurable scheduling advantages. Marshals would be under pressure to locate and arrest defendants; the necessity to travel to meet the deadline in sparsely-populated districts would impose heavily on parties before the court; indigent defendants arrested and arraigned without counsel would either be denied the opportunity to obtain counsel, of choice, or pleas would be entered pro forma; and defense counsel, who are often not aware of the charges against their clients until the indictment is returned or their clients are actually in custody, would often be denied a reasonable opportunity to discuss the entry of a plea with them. Finally, a fixed indictment-arraignment requirement without sanction is largely meaningless, since no incentive would exist to schedule arraignment at the earliest practicable time.

ARRAIGNMENT—TRIAL

As noted in the discussion on *Excludable Delays*, *supra*, the Department of Justice, the Judicial Conference and the American Bar Association all endorse enlargement of the fixed arraignment to trial period of sixty days because they feel that, in addition to being arbitrary, sixty days is simply not enough time to schedule, prepare for and commence trials, particularly in complex cases or those involving multiple prosecutions. The Committee disagrees. The conclusion of the Committee in 1974 was correct. There is a rational basis for concluding that sixty days is a desirable benchmark for the time by which most criminal cases should proceed to trial. There is not sufficient evidence to support the contention that the Act should be altered to effect a fundamental change in policy at this time, particularly since the provisions permitting exclusion of time in specified instances have been interpreted narrowly and inconsistently, recorded haphazardly (where recorded at all) and little use has been made of continuances. Several other arguments have been advanced with respect to relaxing the time strictures during this period which should be considered.

One concern is disposed of quickly. The observation has been made that the rigidity of the time limit will force the courts to disregard the principle of "judicial efficiency." Defendants who are properly

charged with the joint commission of an offense should ordinarily be tried together to save the time, expense and inconvenience of separate prosecutions. It has been reported that some trial judges have granted severances unnecessarily in multidefendant cases "so that a defendant whose case is moving slowly does not hold up the trial of his co-defendants." In its own study the Department studied 180 multidefendant cases. It found no reflection of the occurrence of such incidents. Nor is there an indication of any such occurrences in the data compiled by the Administrative Office. If the Act has been interpreted to require such a result, the Committee calls to the Senate's attention § 3161(h)(7), which provides specifically for exclusion of "a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom time for trial has not run."

A second concern is more serious: adequate time for the consideration of plea bargains. None of the speedy trial objectives sought to be advanced by the Act is served if an innocent defendant, faced with little time to prepare his defense and a Government prepared for trial, accedes to a guilty plea to reduced charges rather than running the risk of a worse fate at trial. The same is true if a United States Attorney with a significant backlog of criminal cases decides to resort to plea-bargaining serious offenses. The most that current data shows is that cases disposed of by plea have increased slightly in the three years the Act has been in effect over the year previous to its enactment but, again, the dismissal sanction has yet to take effect. Whether the excludable delay provisions include time spent by the court in considering a plea bargain proposed to be entered into by the parties is, once again, a matter of interpretation. In its recently-promulgated guidelines, the Second Circuit lists "a defendant's cooperation" as one of the circumstances in which the "ends of justice" almost always outweight the speedy trial interests * * * (whether viewed as a circumstance 'likely to make a continuation of (the) proceeding impossible' under (§ 3161)(h)(8)(B)(i) or a separate factor." The attendant comment says:

> It is evident that a plea agreement or an agreement to terminate the prosecution of a cooperating defendant can often not be made until well after the statutory periods have run. Consequently, an (h)(8) continuance would be most appropriate.

If Federal prosecutorial policies are changing in emphasis to reserve for trial more serious offenders, it is obviously not in the public interest to permit those who have engaged in less serious, but nonetheless proscribed, criminal conduct to "take under advisement" a negotiated plea agreement and then move for dismissal once the time to trial has expired. To the same degree public confidence in equal justice would be eroded from the incarceration of an innocent person forced to plead guilty, due to an inability to prepare his or her defense on time. Either would surely constitute a "miscarriage of justice," and, as the Second Circuit makes plain, no such result was intended. As a general matter the committee is reluctant to automatically exclude plea bargaining *per se* because the difficulty of measuring the beginning on a bonafide bargaining but prefers the case-by-case approach of second circuit under existing language. However, the

Committee amendment would exclude automatically from the sixty-day period delay resulting from consideration by the court of a proposed plea agreement entered into by the defendant and the Government.

The most serious concern about the arraignment to trial period raised by proponents of change involves the ability of the defendant to obtain and maintain counsel of his choice and prepare effectively for trial. Not surprisingly, given palpable judicial unwillingness to interpret the Act's exclusions flexibly to date, the absence of a dismissal sanction to serve as an incentive and a Government which may be prepared to try its case when the indictment is returned, many defense lawyers have characterized the Act as the "Speedy Conviction Act." Theoretically, the defense has a maximum of one hundred days to prepare for trial, less appropriate excludable delays; however, since fewer than four in ten cases commence with arrest, most defendants would have seventy net days to prepare. Moreover, preparation time may be further limited to sixty net days, or less. The ten-day indictment to arraignment period is often eliminated by holding arraignment on the day of indictment or, when arrest follows indictment, on the date of the first appearance. At that point, the clock starts to run. If a defendant is not represented by counsel at that point, part of the preparation time must be consumed searching for representation. Given the fact that a United States Attorney can control the switch on the clock to the extent that the seventy-day maximum is begun upon indictment, the burden of preparation does not always fall as heavily on the Government.

If courts, feeling compelled to schedule trials immediately, are loathe to grant "ends of justice" continuances to permit adequate preparation time—and the Committee finds considerable evidence that many are—and construe automatically-excludable delays with too much inflexibility, the defendant and his counsel may shoulder an unintended and unwarranted share of the speedy trial burden. As the comment from the House Judiciary Committee's 1974 report makes clear, the expedients of speed and efficiency were not to supersede the elements of due process; "* * * (a) scheduled trial date should never become such an overarching end that it results in the erosion of the defendant's right to a fair trial."

The Committee believes that the defendant's ability to retain counsel of his choice and within his means, to enjoy continuity of counsel where possible and to have diligent counsel prepared to put on his or her defense are essential and must be encouraged where to do so would not frustrate the public's interest in speedy trials and would serve the ends of justice. While it believes that the Act as written is flexible enough to permit the realization of these objectives, its legislative history placed undue emphasis on case complexity and failed to foretell the types of occurrences for which defendants should not be penalized, such as good-faith scheduling conflicts and illness. For these reasons, the Committee amendment clarifies reasonable delay for pretrial motions preparation which may automatically be excluded and sharpens the variety of factors courts may consider in deciding whether to grant "ends of justice" continuances, including the uniqueness or complexity of the case, obtaining and maintaining continuity of counsel and reasonable preparation time.

CIVIL BACKLOGS

Widespread criticism has been directed at the Act as the catalyst for courts, anxious to comply with its time limits and thereby avoid the prospect of future dismissals, to abandon their civil dockets in favor of the speedy disposition of criminal cases.

Over the last decade, the increase in the number of civil cases filed annually has been enormous. By June 30, 1978, nearly 139,000 cases had been filed since the preceding July, almost double the number of annual civil filings for the same period in 1967–68. The Department of Justice contends that the increase in the size of the civil case backlog is attributable at least in part to the enactment of the Act, since the percentage of cases pending since 1975 has increased by 35 percent, while the number of filings has increased by only 18 percent. In the districts it sampled, the Department found a correlation between civil case terminations and compliance with the Act; in "low" compliance districts, the increases in civil case termination rates were approximately 1.5 times greater than those in "medium" and "high" compliance districts.

The Fordham Law Review project, on the other hand, reaches the opposite conclusion. After surveying civil pending rates, criminal docket activity and judicial reaction in detail in three metropolitan districts, their study says:

> Experience in the three districts surveyed, however, reveals that the Act may not be as culpable on these counts as its detractors have charged. While the majority of judges interviewed agreed that the number of civil cases on their dockets was increasing yearly, a substantial number declared that the Act was not a factor in the status of their dockets. Moreover, that the rise in the civil pending rate is not entirely, if at all, the fault of the Act is supported by an analysis of the caseloads in the three districts.

The evidence is clearly in conflict. The Department admits that "[o]ne can only speculate what effect the Speedy Trial Act has had upon the civil calendar * * * [p]recise data are lacking". The Department's study admits that "* * * other factors may have affected the observed shift in civil filings, terminations, and pending cases", such as individual case complexity. Despite the Act's admonition to the planning groups to "avoid underenforcement [and] overenforcement * * * of the law [and] prejudice to the prompt disposition of civil litigation * * *" in planning the implementation of the act, many districts reported to the Judicial Conference's Ad Hoc Subcommittee on Speedy Trial that they were "virtually ignoring their civil calendars."

Thus, the Committee cannot say that the Act is not having an adverse impact on civil litigants, nor can it say at present that the Act is merely a convenient excuse for insisting that its prescriptions be relaxed. What can be said is that much more needs to be learned, and soon, about just what effect the Act is having on civil case filings, terminations and backlogs on a district-by-district basis and what more can be done to alleviate the seriousness of the problem, if indeed it

does trace back to the Act. The Committee has included, therefore, in its amendment provisions to extend the planning, data collection and reporting requirements of the Act with greater emphasis on participation by civil litigants.

RESOURCES

Practically no one, in calling for extension of the Act's time limits because of what is characterized as impending disaster, has bothered to speculate on what effect the addition of significant judicial and prosecutorial resources will have on the disposition of criminal cases. In making required requests of the Congress for additional resources to aid the implementation of the Act, the district planning groups last year requested 120 permanent and 2 temporary new district judgeships. Last year, the Congress enacted the Omnibus Judgeship Act of 1978, which created 117 new district judgeships (114 permanent, 3 temporary) and 35 circuit court judgeships. Last month, the Committee authorized an increase of 630 positions and some $22 million in the fiscal year 1980 budget of the Department of Justice for United States Attorneys, Marshals and bankruptcy trustees to offset the increase in the Federal judiciary by nearly one-third. Moreover, the Committee has under active consideration legislation which would abolish diversity of citizenship as a jurisdictional basis for bringing suit in Federal court which, if enacted, would eliminate the filing of 31,625 new civil filings annually; legislation which would amend the Magistrates' Act to extend the authority of United States Magistrates to hear and dispose of matters now required to be heard by a judge; legislation which would require arbitration, rather than full-dress trial, of certain types of civil disputes; legislation which would provide a statutory framework for diverting from the criminal process certain types of nonviolent offenders; and legislation which would codify and streamline procedures governing class action and shareholder-derivative suits.

Obviously, the sharp increase in the size of the Federal judiciary and in United States Attorney and Marshal positions will have a highly significant impact on existing criminal and civil backlogs; it is just as obvious, however, that that impact will not be apparent immediately. It would do a disservice to what the Act has already accomplished to make vital decisions about the future of its objectives without first learning what the addition of more resources will mean, as far as the ability of the Federal criminal system to conduct its business is concerned. Similarly, allowing the Act to become effective before those resources are stable enough to measure their effectiveness would, the Committee fears, tend to make criticisms of the Act which have been found wanting, in some respect or another, self-fulfilling prophecies. This factor has contributed heavily to the Committee's decision to postpone the effective date of the dismissal sanction.

WAIVER

In conjunction with its recommendation to enlarge the time limits of the Act while giving the defense not less than thirty days to prepare for trial, the Judicial Conference has recommended in the past that the Act be amended further to permit the defendant to waive the

thirty-day minimum. While the Committee has received no formal legislative recommendation to permit waiver by the defendant of any part of the Act, it has found that some judges feel that the Act may be waived by a defendant currently.

The sole reference to waiver in the Act appears in § 3162(a)(2), which states:

> * * * Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

The Committee wishes to state, in the strongest possible terms, that any construction which holds that any of the provisions of the Speedy Trial Act is waivable by the defendant, other than his statutorily-conferred right to move for dismissal as cited above, is contrary to legislative intent and subversive of its primary objective: protection of the societal interest in speedy disposition of criminal cases by preventing undue delay in bringing such cases to trial.

Several arguments based on constitutional grounds have been advanced to justify the use of waiver:

(1) Waiver of the speedy trial guarantees established by the Act is properly inferred from the defendant's ability to waive the Sixth Amendment right to speedy trial. As has already been stated, the Act seeks to protect and promote speedy trial interests that go beyond the rights of the defendant; although the Sixth Amendment recognizes a societal interest in prompt dispositions, it primarily safeguards the defendant's speedy trial right—which may or may not be in accord with society's. Because of the Act's emphasis on that societal right, a defendant ought not be permitted to waive rights that are not his or hers alone to relinquish.

(2) A construction of waiver is necessary to preserve the constitutionality of the Act. Specifically, it is asserted that the excludable time provisions do not allow delay in many circumstances where denial of a continuance would deprive the defendant of his or her rights to assistance and choice of council, as well as due process of law. If the defendant cannot in those instances free himself from the statutory constraints through the expedient of waiver, the argument proceeds, the Act is to that extent unconstitutional. The Committee contends that any conclusions that the Act does not provide sufficient latitude to permit delay in situations where a defendant's recognized Sixth Amendment right is jeopardized thereby—effective assistance of counsel, including the right to prepare an adequate defense and reasonable preparation time; choice of counsel; and fundamental due process is based on reading the Act much too narrowly. The Second Circuit guidelines in construing both the automatically-excludable delay and the "ends of justice" continuance provisions, make ample room for accommodation of circumstances where strict enforcement of the Act's time limits might prejudice acknowleged Sixth Amendment speedy trial rights which accrue to the defendant. Nonetheless, the Committee amendment further clarifies applicable provisions in both the delay-exclusion and continuance provisions to remove any doubt.

In summary, the Committee concludes that significant experience under the Act's final time limits, with no imposed sanction for non-compliance—save those specified in § 3164, as amended will put the Congress in a much better position to decide whether changes in the Act's keystone provisions are warranted. This deferral period will allow sufficient time for continued planning and reporting, better data collection and analysis and determination of what impact the addition of significant new resources will have on the administration of criminal justice and implementation of the Act. The study done by the Department of Justice is in accord:

> A proposal which appears to make sense at this point is to delay for a period of time the sanction of mandatory dismissal for non-compliance in order that some experience may be had with the operation of the ultimate time limits before the sanction becomes effective. This proposal would seem to be in keeping with the legislative history of the Speedy Trial Act, while avoiding "tinkering" based more on informed speculation than on reliable information.
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> * * * * *
>
> The benefits of the Act's unique, graduated approach will be substantially dissipated, it now appears, if the ultimate limits of the dismissal sanction come into effect simultaneously. Certainly the Federal system would be deprived of an opportunity to gain substantial nationwide experience under the ultimate limits without the sanction. Individual districts would also be deprived of the chance to operate under the one-hundred day limit free of a threat that may divert the participants; performances from a professionally acceptable level. Modification of the Act to allow sufficient time to analyze the system's performance under the 1979 time limits will enable Congress thereafter to determine with greater accuracy what adjustments, if any, may be needed in the Act or in the allotted resources of the various elements of the system.

IV. Explanation of Committee Amendments

SUMMARY

Both S. 961, the Department of Justice's bill, and S. 1028, the Judicial Conference's bill, would expand the Act's existing time limits from 100 days (arrest to trial) to 180 days in all cases, subject to automatic and discretionary exclusions. As discussed above, it is the view of the Committee that, taken as a whole, the testimony taken and exhibits received during the May 2 and May 10 hearings on these bills neither make the case for nor support such a fundamental policy change in the Act at this time. Rather, they tend to lead to the conclusion that more experience and data are needed to determine whether such changes are, in fact, necessary.

In the main, the Committee amendment would defer the effective date of the dismissal sanction an additional two years, until July 1, 1981, meaning that no criminal case could be dismissed for failure to

indict or try the defendant within the Act's final time limits until that date.

In addition, it would permit districts that are prepared to implement the section 3162 sanctions fully to do so prior to the new effective date by establishing an application-approval procedure for that purpose. The latter provision, coupled with continued and expanded reporting requirements, would provide the necessary data and case experience to permit an informed judgment as to whether the basic principals embodied in the Act are sound and worthy of permanence.

Other major areas of importance to all parties upon which agreement has been reached and which are included in the consensus substitute are as follows:

(1) merging the present 10-day indictment-to-arraignment and 60-day arraignment-to-trial intervals into a single, 70-day period [§ 3161(c)(1)];

(2) guaranteeing the defendant a reasonable period in which to obtain counsel and prepare for trial—30 days from the date the defendant appears through counsel or elects to proceed *pro se*, unless the defendant waives the right conferred [§ 3161(c)(2)];

(3) assuring necessary flexibility where a defendant is to be retried following the dismissal of an indictment, which is reinstated following appeal, or where he is to be retried following other appeals, declaration of mistrial or order for new trial [§ 3161 (d), (e)];

(4) defining more precisely periods of delay resulting from "proceedings concerning the defendant" which are automatically excludable from the Act's time limits, relating especially to examinations, motions practice, interdistrict transfers and transportation [§ 3161(h)(1)];

(5) clarifying the grounds for "ends of justice" continuances to permit reasonable delay where, due to the nature of the case or attendant circumstances, it is unreasonable to expect an indictment to be returned or either party to be fully prepared for pretrial proceedings or trial within the time limits and, in routine cases, to protect the defendant's ability to obtain counsel of choice and to protect the ability of both parties to prepare fully from unforeseen circumstances [§ 3161(h)(8)(B)(i)–(iv)];

(6) making the interim limits for the trial of detained or high-risk defendants permanent [§ 3164];

(7) requiring the planning groups in each district to submit at least one final implementation plan prior to the effective date of the dismissal sanction and to report on the impact of the Act's implementation on the civil case backlog [§§ 3165(e)(2)–(3), § 3166(b), (c)] and, in addition, to require the appointment of a private attorney skilled in civil litigation to each planning group [§ 3168(a)];

(8) permitting circuit councils to promulgate guidelines which promote uniform interpretation of the Act within the circuit [§ 3166(f)];

(9) requiring the Administration Office of the U.S. Courts and the Justice Department to file pre-sanction reports (September 30 and December 31, 1980, respectively) which set forth the data and case experience found wanting in the hearings and recommendations for change [§ 3167(b),(c)];

(10) making the speedy trial data collection section permanent [§ 3170]; and

(11) giving the chief judge of a district the power to suspend the final time limits up to thirty days, under emergency conditions [§ 3174(e)].

SECTION-BY-SECTION ANALYSIS

Section 2 amends § 3161(c) to merge the second interval indictment to arraignment) into the third interval (arraignment to trial). Thus, instead of 30–10–60 day intervals, the Act would operate on a 30–70 day (arrest to indictment, indictment to trial) basis.

Both S. 961, as introduced, and S. 1028 would make this change. In addition, a new paragraph (2) prohibits any trial from occurring within 30 days "from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed *pro se*", unless the defendant consents in writing to an earlier trial. This provision assures the defendant some minimal time to prepare. It is similar to a comparable provision in the Justice Department and Judicial Conference bills; however, those bills provide that the 30-day minimum is to be measured from the date of indictment or bail hearing.

Prohibiting trial less than 30 days after the date the defendant appears in a position to begin preparing his defense more fully protects basic due process rights. It is the Committee's intent that the exclusions provided in section 3161(h) apply to the 30-day minimum to-trial provision. Therefore, if an event occurs which would automatically exclude time under subsection (h), such as a pretrial mental examination, that time is not only excluded from computing the time within which trial must occur prior to imposition of the dismissal sanctions, but time would also automatically be excluded in computing the 30-day minimum period of time, during which the judge could not schedule trial without the defendent's consent.

Having said that, the Committee wishes to stress that this minimum-preparation time guarantee is not to be construed to permit the defendant to delay unduly the trial date, especially where permissible excludable delay is found. If, for example, counsel for the defedant moves for an "end of justice" continuance under section 3161(h)(8) to allow him or her additional time to prepare for trial, the court should scrutinize closely his or her good-faith efforts to prepare inside the time fixed for trial, taking into account other excludable delays. Again, the court should take great care to balance the defendant's and society's speedy trial rights against the "ends of justice" to be served by granting such a motion.

Section 3 amends § 3161(d) to reflect the Justice Department's proposal concerning the trial upon indictments dismissed by the trial court and subsequently reinstated on appeal. The only difference is that the time limits for such trial in the substitute is seventy days in order to make that limit consistent with the amendment to section 3161(c) contained in section 1. However, the Committee amendment, like the Department's bill, permits the Court to extend the trial date up to 180 days, if passage of time or other factors make the shorter limits "impractical."

This amendment clarifies existing law and assures that, in the case of an indictment which is dismissed by the trial court but reinstated upon appeal, the time limits are the same as those under the Act when the defendant successfully secures a new trial on appeal. The amendment also specifies that the periods of excludable delay and the dismissal sanction are applicable, and make similar conforming amendments to § 3161(e).

Section 4 expands and clarifies the specifically-enumerated periods of excludable time. It combines the best aspects of the Department's and the Conference's proposals. The Committee amendment leaves intact, however, both the order and the automatic application of exclusions as provided in existing law. The Conference bill would have made the application of excludable time discretionary, instead of automatic.

Section 3161(h)(i) currently provides that periods of delay consumed by the following are to be automatically excluded:

An examination or hearing to determine mental competency of physical incapacity;

An examination under the Narcotic's Addicts Rehabilitation Act of 1966, as amended (28 U.S.C. 2902);

Trials of other charges against the defendant;

Interlocutory appeals;

Hearings on pretrial motions;

Transfer proceedings; and

Periods when any of the above proceedings are under advisement by the court.

The Committee amendment adds to this list three Judicial Conference suggestions concerning delays resulting from:

Deferral of prosecution under 28 U.S.C. 2902;

Transportation of the defendant from other districts and for examination or hospitalization with a rebuttable presumption that any period so consumed in excess of 10 days is unreasonable; and

Consideration of proposed plea agreements.

These amendments would clarify the language contained in existing law, pursuant to several suggestions made by the Department and the Conference,

The mental examination provision would allow the exclusion of more than one examination or any proceeding (instead of one hearing); the same type of change is made for examination under Section 2902, Title 28.

The "hearings on pretrial motions" provision would be enlarged to, include, as excludable time, the entire period of time from the date of filing to the conclusion of hearings on, or other prompt disposition of, pretrial motions.

The "proceedings related to transfer" provision is expanded to include the removal of the defendant from another district.

The Committee's recommended changes in the computation of excludable delays and pretrial motions practice bear some explanation. First, the language in subparagraph (F) of subsection (h)(1), the automatically excludable delay provisions, must be read together with the proposed change in clause (ii) of subsection (h)(8)(B) involving "preparation" for "pretrial proceedings". Although some witnesses contended that all time consumed by motions practice, from prepara-

tion through their disposition, should be excluded, the Committee finds that approach unreasonable. This is primarily because, in routine cases, preparation time should not be excluded where the questions of law are not novel and the issues of fact simple. However, the Committee would permit through its amendments to subsection (h)(8)(B) reasonable preparation time for pretrial motions in cases presenting novel questions of law or complex facts. We suggest caution by courts in granting "ends of justice" continuances pursuant to this section, primarily because it will be quite difficult to determine a point at which preparation actually begins.

This provision and the change the committee amendment makes with respect to the automatic exclusions for pretrial motions in (h)(1)(F) is an appropriate subject for circuit guidelines, pursuant to the Committee's addition of a new subsection (f) to section 3166. Not only should such guidelines instruct courts on how to compute the starting date of preparation for complex pretrial motions, but such guidelines should also set uniform standards for motion practice. Many courts by local rule have either adopted an omnibus pretrial motions procedure, which requires consolidation of all such motions soon after arraignment, or they require the filing of pretrial motions within a specified number of days (often 10) after arraignment, although they need not be consolidated. The Committee expresses no preference but recognizes that, if basic standards for prompt consideration of pretrial motions are not developed, this provision could become a loophole which could undermine the whole Act.

Finally, the section provides exclusion of time from filing to the conclusion of hearings on or "other prompt disposition" of any motion. This later language is intended to provide a point at which time will cease to be excluded, where motions are decided on the papers filed without hearing. In using the words "prompt disposition", the committee intends to make it clear that, in excluding time between filing and disposition on the papers, the Committee does not intend to permit circumvention of the 30-days, "under advisement" provision contained in Subsection (h)(1)(J). Indeed, if motions are so simple or routine that they do not require a hearing, necessary advisement time should be considerably less than 30 days. Nor does the Committee intend that additional time be made eligible for exclusion by postponing the hearing date or other disposition of the motions beyond what is reasonably necessary.

Section 5 of the Committee amendment clarifies the list of factors that the court should consider when granting an "ends of justice" continuance under section 3161(h)(8).

Subsection (a) amends clause (ii) of existing section 3161(h)(8)(B) to address, in part, the preparation time problem regard pretrial motions, discussed above. In addition, it makes it clear that, in unusual or complex cases, the court, by utilizing the "ends of justice" balancing test, can grant a continuance to either party where circumstances warrant it, such as extensive discovery based on complex transactions.

Subsection (b) deals with a very specific problem presented to the Committee by the Department of Justice. When the Congress considered the Act in 1974, it specifically created flexibility in subsection 3161(b) for small and rural districts, where grand juries are not in

continuous session, by providing an additional 30 days when arrest occurs when the grand jury is not in session, during the 30 day period. The amendment made here is designed to clarify the authority of the court, pursuant to the general "ends of justice" balancing test, to grant a continuance in a circumstance such as might occur in a rural jurisdiction where a regularly-convened grand jury is to expire shortly after an arrest is made. This provision assumes that the Department feels constrained to arrest the defendant, e.g., for fear of flight, yet cannot be prepared to present the case to the grand jury within the time before it is due to expire.

The amendment in subsection (c) meets the defense bar's major concern that, in some circumstances, there will be inadequate time to prepare within 70 days from indictment, as well as the Government's concern that, in some cases, the 30 day period from arrest to indictment is too short for adequate investigation. There are three significant parts to this provision:

First, defendants are specifically afforded a reasonable time to obtain counsel. A continuance would be available explicitly to toll the time limit for a reasonable period during which the defendant seeks to obtain legal representation of his choice. Under existing law, the defendant may be faced with an impending trial date without counsel and, instead of being able to spend his time working on the defense, he must spend his time trying to find representation. This amendment would, if the court finds that the "ends of justice" require it, "stop the clock," for a reasonable time, until the defendant obtains counsel.

Second, this amendment would provide a basis for a continuance, for either the Government or the defendant, when failure to do so would unreasonably deny continuity of counsel. This meets the concern over scheduling conflicts caused by defense counsel's and the United States Attorneys' good faith, already scheduled commitments or other unavoidable problems such as emergency, illness, long-planned vacation or other circumstances which would otherwise require a disruptive change of counsel, in order to meet the time limits.

Third, and most important, the Committee amendment provides the court a basis for a continuance when, after due diligence on the part of counsel for either party, there is simply not enough time to effectively prepare for trial of a case which is neither unusual nor complex, within the meaning of new clause (ii), *supra*. The Committee intends that the Government would bear a heavy burden under this provision, in cases started by indictment, when it has been preparing a case for a substantial period of time prior to seeking and obtaining return of the indictment. In cases initiated by arrest, however, granting a motion for continuance under this provision should be easier.

Section 6 would amend § 3163(c) to defer the imposition of the dismissal sanction until July 1, 1981, and the Committee intends that the sanction applies only to all cases commenced by arrest or summons and all informations or indictments filed thereafter.

Section 7 amends § 3164, which establishes time limits for the trial of those persons designated to be of high risk by the Government or those in detention awaiting trial. The Committee amendment matches the Justice Department's proposals to make the interim limits permanent with respect to those two clauses of defendants. Thus, high risk

or detained persons will have to be tried within 90 days, as the Department has represented it is prepared to continue doing, or suffer the consequences, as currently provided.

The amendment provides specifically that excludable periods of delay apply to these cases, thereby resolving a conflict in the circuits on that issue.

Sections 8 and 9 amend sections 3165 through 3170 to extend the planning and reporting procedures of the district planning groups now in effect for two additional years. This will provide the Congress the additional information it needs from then on the effect of the Act, as amended, under the final time limits. Furthermore, under subsection (e) the Administrative Office of the United States Courts and the Justice Department will be required to report to Congress on their respective efforts to improve implementation of the Act in low-compliance districts. The amendment also requires them to explain why any cases which might exceed the time limits could not be handled through the flexibility provided under the Act.

Subsection (c) amends § 3166, adding a new subsection (f) which would assist in the implementation of the Act by permitting the judicial councils of the circuits to promulgate guidelines to be used by all the courts in that circuit for interpretation and application of the provisions of the Act. Such guidelines, similar to those already issued by the United States Court of Appeals for the Second Circuit would eliminate ambiguity and uncertainty which have prevailed due to inconsistent and inflexible interpretation of the Act.

In fact, the Committee strongly recommends a decided effort on the part of the Administrative Office to lend its technical support to enable the kind of interchange among the circuit councils which would discourage conflicting guidelines.

Section 10 amends § 3174, the judicial emergency provision, to accomplish several important objectives:

First, the provision is amended to make the application-for-suspension process less cumbersome, by eliminating the requirement that the application be processed all the way up through the Judicial Conference before emergency suspensions take effect. As both the Department of Justice and Judicial Conference pointed out, the Judicial Conference meets only twice annually, and—although the application approval function could be delegated in some fashion—the Committee believes that the judicial councils of each circuit are more capable and desirable for performing such a function. Judicial councils are closer to the problems of individual districts, and permitting each council to perform the suspension approval function will increase the overall flexibility of the provision. The Committee cautions circuit councils to take this role seriously and approach it with a great deal of circumspection.

Second, the section is amended to permit the chief judge of any district, with the approval of the planning group, to apply to the circuit council to implement the provisions of § 3162 at any time prior to the date the sanctions become effective, if there is concurrence that the district is ready to implement them fully. This is a vital corollary to the deferral scheme, since, as both the Department of Justice's OIAJ study and the General Accounting Office pointed out, straight deferral—without more—will deprive the Congress and the system of ex-

perience more nearly approximating post-sanction conditions. The Committee encourages those districts, particularly the seventeen that are now operating under the Act's final time limits, who feel capable of implementing the dismissal sanctions to do so, as it will provide the Congress with a much better indication of how the Act is likely to affect the system and whether major changes should be made. Should any districts choose to implement § 3162 during the deferral interval, the Committee expects both the Administrative Office and the Department of Justice to pay close attention to their experiences and problems.

Third, the amendment preserves the reporting requirements and the involvement of the Congress in the suspension process and assures that the initial interval remains in effect.

Finally, acceding to the request of both the Department and the Conference, the bill as amended amends the suspension provisions to permit the chief judge of any district to suspend the operation of the time limits in his district for up to thirty days, provided he finds the need to do so is of "great urgency" and files an application for suspension under the formal, statutory process within 10 days. The Committee believes that situations may arise where the exercise of such authority is necessary and, further, that chief judges are in the best position to judge when an emergency is of such magnitude that immediate suspension is the only way to forestall disaster. The Committee asks and expects that chief judges will exercise this authority in good faith and sparingly.

Sections 11 and 12 make technical and conforming amendments to the Act.

V. Cost of this Legislation

COMMITTEE ESTIMATE

In compliance with section 190j(a) of title 2, United States Code, the Committee states that the enactment of S. 961, as amended, will result in no additional cost to the Government.

In enacting the Act in 1974, the Congress approved an authorization of $2,500,000 for fiscal year 1975, to remain available until expended. It is the Committee's information, from the Congressional Budget Office and the Administrative Office of the United States Courts, that some $857,000 remains of that initially appropriated sum which, in the Committee's judgment, will be ample to support the extended planning and reporting requirements.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate of the Congressional Budget Office is set forth below:

June 13, 1979.

Hon. Edward M. Kennedy,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 961, the Speedy Trial Act Amendments Act of 1979, as ordered reported by the Senate Committee on the Judiciary, June 13, 1979.

This bill extends the time limitations set for various trial procedures and allows the chief judge of a district court to suspend certain of these limitations under certain circumstances. It is expected that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

REGULATORY IMPACT OF THE BILL

In compliance with clause 5 of rule XXIX of the Standing Rules of the Senate, the Committee states that, because the bill as amended extends the operation of certain planning and reporting requirements in the Speedy Trial Act of 1974 to better enable the Congress, the Department of Justice, United States Attorneys and the Federal Judiciary to evaluate the eventual impact of the Act on the operation and administration of the Federal criminal justice system, and because the bill as amended defers final implementation of the Act's full implementation schedule, enactment of the bill as amended would have no regulatory or economic impact upon individuals or businesses, nor would it affect the personal privacy of affected individuals or result in additional paperwork by affected parties.

COMMITTEE CONSIDERATION

On June 13, 1979, a quorum being present, the Committee on the Judiciary agreed to an amendment in the nature of a substitute to S. 961 and ordered the bill reported favorably, as amended, by unanimous voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 18, UNITED STATES CODE—CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 208—SPEEDY TRIAL

Sec.
3161. Time limits and exclusions.
3162. Sanctions.
3163. Effective dates.
[3164. Interim limits.] *3164. Persons detained or designated as being of high risk.*
3165. District plans—generally.
3166. District Plans—contents.
3167. Reports to Congress.
3168. Planning process.
3169. Federal Judicial Center.
3170. Speedy trial data.
3171. Planning appropriations.

3172. Definitions.
3173. Sixth amendment rights.
[3174. Judicial emergency.] *3174. Judicial emergency and implementation.*

* * * * * * *

[(c) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.]

(c) (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 seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d) *(1)* If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a 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, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

* * * * * * *

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within [sixty] *seventy* days

from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within [sixty] *seventy* days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical. *The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.*

* * * * * * *

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or incomputing the time within which the trial of any such offense must commence:

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

(A) delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from trials with respect to other charges against the defendant;

(D) delay resulting from interlocutory appeals;

(E) delay resulting from hearings on pretrial motions;

(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.]

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

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion, through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) 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;

(H) 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 ten 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;

(I) 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

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

* * * * * * *

(8)(A) 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. 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.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether 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 taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.]

(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 is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this sectioin.

[(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.]

(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.

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§ 3163. Effective dates

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[(c) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.]

(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1981.

[§ 3164. Interim limits] ***§ 3164. Persons detained or designated as being of high risk.***

[(a) During an interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

[(1) detained persons who are being held in detention solely because they are awaiting trial, and

[(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.]

(a) The trial or other disposition of cases involving—

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

(2) 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) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.]

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety 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 section 3161(h) are excluded in computing the time limitation specified in this section.

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§ 3165. District plans—Generally

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(e) (1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and [subsequent] *fifth* twelve-calendar month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(3) Prior to the expiration of the sixty-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.

§ 3166. District plans—contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications; [and]

(8) the incidence of, and reasons for each thirty-day extension under section 3161(b) with respect to an indictment in that district[.]; *and*

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition; [and]

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition[.]; *and*

(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.

§ 3167. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The

reports shall be submitted within three months following the final dates for the submission of plans under section 3165(e) of this title.

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts.

Such reports shall also include the following:

(1) The reasons why, in those cases not in compliance with the time limits of subsection (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsection (b) and (c) of section 3161.

(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 1374 has not been made, the reason why such application has not been made.

(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.";

(c) Not later than December 31, 1980, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the De-

partment of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.

§ 3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, [a private attorney experienced in the defense of criminal cases in the district] *two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district*, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. This group shall advice the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

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§ 3170. Speedy trial data

(a) To facilitate the planning process [and], the implementation of the time limits, and *continuous and permanent compliance with the* objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics [required by] *described in* section 3166(b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

[§ 3174. Judicial emergency] § *3174. Judicial emergency and implementation*

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits. The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources [.], *as described in subsection (b)*.

(b) [If the judicial council of the circuit shall find that no remedy for such congestion is reasonably available, such council may apply

to the Judicial Conference of the United States for a suspension of time limits sets forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such period.] *"If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period.* During such period of suspension the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from [arrangement] *arraignment* to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

[(c) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent by the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year.]

(c)(1) If, prior to July 1, 1981, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section

3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d) (1) The approval of any application made pursuant to subsections (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall forthwith transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress.

(3) If the judicial council concludes that an additional period of suspension within such six-month period is necessary, it shall report that conclusion to the Judicial Conference of the United States, together with the application from the district court for such additional period of suspension and any other pertinent information. If the Judicial Conference agrees that such additional period of suspension is necessary, it may request the consent of the Congress thereto. If the Congress fails to act on any such request within six months, the suspension may be granted for an additional period not to exceed one year.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

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