SPEEDY TRIAL: The path to protecting the rights of citizens and defendants

The Honorable Anne C. Conway

For over 200 years, the Sixth Amendment to the United States Constitution has guaranteed “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . .” The speedy trial right “has its roots at the very foundation of our English law heritage” and has since grown to be recognized as “one of the most basic rights preserved by our Constitution.”

Defendants and society alike benefit from protection of this right. For defendants, it “is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.” For the rest of us, enforcement of the guarantee tames a number of social ills that can be traced to court congestion and delay. For example, bringing criminal defendants to a prompt trial cuts down on their ability to commit additional crimes while they await trial, decreases the likelihood they will jump bail, minimizes their ability to negotiate pleas to lesser offenses, and prevents them from requiring lengthy, and therefore costly, pretrial detention.

I. Judicial Enforcement Efforts - Case-by-Case Adjudication

Until the mid-1970’s, the federal judiciary shouldered the burden of shaping and enforcing the speedy trial guarantee. And, while determining the scope of the right seems to have come easily to the Supreme Court of the United States (it extends only to individuals who have been formally accused of a crime), dictating the moment at which a violation of the right occurs proved to be a more difficult task. Indeed, in its 1972 decision in Barker v. Wingo, the High Court, referring to the right as “slippery,” “amorphous,” and “vague,” conceded that it was simply “impossible to determine with precision when the right has been denied.” However, given the “large backlog of cases in urban courts,” as well as the pervasive uncertainty faced by the lower courts in protecting the speedy trial right, the Court endeavored to provide some much-needed guidance. Rejecting the so-called demand-waiver doctrine, and a call to institute a rule requiring defendants to be brought to trial within a specified time period, the Court instead forged ahead with a “difficult and sensitive” balancing test, which required consideration of four factors: “Length of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.”

The first of these factors, the length of delay, was considered “a triggering mechanism” for the rest of the balancing test, and its importance was “necessarily dependent upon the peculiar circumstances of the case.” With regard to the reason for delay, the Court deemed the government’s deliberate attempts to delay trial to prejudice the defense as weighing heavily against the government, while valid reasons, such as missing witnesses, “should serve to justify appropriate delay.”

The Court regarded the third factor, the defendant’s assertion of the right, as “entitled to strong evidentiary weight.” That is, “failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.” Finally, prejudice to the defendant was to
be considered in light of three interests the speedy trial guarantee was designed to protect: “(i) prevention of oppressive pretrial incarceration; (ii) minimization of anxiety and concern of the accused; and (iii) limitation of the possibility that the defense will be impaired.”19 The last of these interests was, in the Court’s view, “the most serious.”20 In sum, the Court stressed, the four factors “have no talismanic qualities,” but, instead, “must be considered together with such other circumstances as may be relevant.”21

II. Changes to the Federal Rules of Criminal Procedure

The Barker case was not the only federal speedy trial guidance issued in 1972. In fact, a few months prior to the decision’s release, the Advisory Committee on Criminal Rules finalized Rule 50(b) of the Federal Rules of Criminal Procedure, which was intended “to achieve the more prompt disposition of criminal cases” in light of the “increasing interest and concern,” particularly among members of Congress, with undue delay in the criminal justice system.22 Like the High Court, the Advisory Committee refused to prescribe specific time limits for various phases of the pretrial process, although for different reasons.23 Instead, the Committee opted to require each federal district to draft its own plan for minimizing delay in moving criminal defendants to trial. Specifically, each district was required to evaluate the sources of pretrial delay, craft appropriate time limits for trial, and disclose whether and what type of additional resources might be needed to carry out the plan.24

III. Legislative Intervention

Meanwhile, as the Advisory Committee had noted, members of Congress were engaging in their own discussions about how best to remedy the mounting backlog of criminal cases in the Federal courts. A 1974 report from the Senate Judiciary Committee indicates that concern about pretrial delay was well-founded. In particular, the Committee noted a Federal Judicial Center study’s “disturbing revelation” that the delay between arrest and trial of criminal defendants was, on average, 350 days.25 The Committee additionally cited a 1970 National Bureau of Standards study showing that the likelihood a criminal defendant released pending trial would commit a subsequent crime increased “significantly” if he or she was not brought to trial within 60 days.26 Based on these and other studies and input from the bench and bar, the Committee concluded that any speedy trial legislation should aim to reduce the time between arrest and trial to 90 days.27

With this goal in mind, the Committee attempted to dissect the “fundamental disagreement over the causes of delay” in Federal criminal cases.28 It emerged empty-handed, however, noting that the issue was “complex” and incapable of being resolved due to the inability of criminal justice system participants to effectively evaluate their own contributions to delay.29 Thus, the Committee turned its attention to several alternative approaches to resolving the speedy trial problem. Particularly noting the failure of the Federal courts to effectively control delay in criminal cases,30 the Committee settled on a legislative remedy that would dictate a statutory time limit for trial, and provide for sanctions should trial not commence within the time limit.31 In addition to the time-limits and sanctions provisions, which would be phased in over several years, the Committee envisioned a planning process within each judicial district, in which all players in the criminal justice system would gather together to formulate a plan and
proposed budget for implementing the speedy trial legislation. In the Committee’s view, such a scheme imposed speedy trial responsibilities on all parties involved, reinforcing the idea that “trial delay is not to be laid at one door, but at all.”

Drawing upon lessons learned from two prior failed bills, testimony from judges, attorneys and representatives of the Justice Department, and driven by a well-documented “speedy trial crisis in the Federal courts,” the United States Senate passed Senate Bill 754 “to make effective the sixth amendment right to speedy trial in Federal criminal cases” in July 1974. The highlights of the bill were as follows:

- after a six year gradual phase-in period, an information or indictment was required to be filed within 30 days of arrest, and trial was required to start within 60 days after the information or indictment was filed
- certain enumerated periods of delay were excluded from calculation of the time limits
- if the time limits were not met, the information or indictment was required to be dismissed without prejudice, and could be reinstituted only upon a finding of compelling evidence that the delay was caused by unforeseen or unavoidable “exceptional circumstances”
- sanctions could be imposed on counsel for knowingly allowing speedy trial time limits to pass or purposefully delaying proceedings
- each district was required to, at specified intervals, submit speedy trial plans for handling criminal cases during the six year phase-in period
- a pretrial services agency was to be established in ten representative judicial districts to aid the courts in maintaining effective supervision over defendants who had been released to await trial

Upon receipt of the Senate bill, the House Judiciary Committee held its own hearings on the matter. The result of those hearings, and consideration of eight similar House bills, was House Bill 17409. In the accompanying report, the Committee echoed the Senate’s concerns regarding the inadequacy of prior judicial efforts to enforce the speedy trial guarantee, as well as its frustration with the blame game being played among participants in the criminal justice system. Even so, the Committee found that legislation placing specific time limits on criminal proceedings would likely “increase the deterrent effect of the criminal law, ease the task of rehabilitation of offenders and reduce crime,” while still maintaining the constitutional rights of the accused. Thus, the Committee concluded, the time for legislative intervention had come.

The most notable House changes to the Senate bill were as follows:

- an additional ten day period was allowed between the filing of the indictment and arraignment, making the total number of days between arrest and trial 100 instead of 90
- the phase-in period was shortened from 6 years to 4 years
- if the time limits were not met, the information or indictment had to be dismissed with prejudice
• a dismissed indictment or information could never be reinstituted
• a “judicial emergency” provision was added to provide relief from the time limits where unforeseen circumstances caused unmanageable criminal case backlogs

On the House floor, the legislation met with strong opposition from those fearing that the dismissal-with-prejudice provision would allow more criminals to go unpunished. These fears were somewhat quelled by committee amendments offered during debate, which did away with the dismissal-with-prejudice sanction in favor of allowing the trial court, on a case-by-case basis, to decide whether an indictment or information should be dismissed with or without prejudice. These amendments were ultimately agreed to. There was also concern regarding defense attorneys’ ability to fully prepare cases within the new time limits. Amendments extending the time limits beyond a total of 100 days were, however, ultimately rejected. Other concerns raised included the lack of remedy for judicial “foot-dragging,” and whether the legislation should focus instead on delay at the appellate level.

In spite of these concerns, the overall mood appeared to be one of overwhelming support for the bill. Representative Gude noted that is was “clear and obvious that this legislation is in the interest of the defendant as well as in the interest of society.” Representative Sarbanes lauded the bill as “a very important step forward in the due administration of criminal justice in this country,” an “enormous” benefit to society, and “extremely important in terms of the contribution it will make to a perception and an understanding of the community that our criminal justice system works—works with proper speed.” Many others rose in favor of the bill with similar words of support. Thus, after lengthy discussion, and the addition of various committee amendments, H.R. 17409 was passed on December 20, 1974. Later that day, without debate, the Senate concurred in the House amendments.

IV. Executive Approval, With Reservations
Entitled “[a]n act to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial,” the Speedy Trial Act of 1974 was signed into law by President Gerald R. Ford on January 3, 1975. Upon signing the bill, President Ford expressed “some reservations,” however. While he “fully endorse[d] the goal of speedy justice,” he believed that the sanction of dismissal of the indictment with potential preclusion of subsequent indictment (in the trial judge’s discretion) would result in unnecessary exoneration of criminal defendants for serious offenses. President Ford was additionally concerned that the bill imposed “increased demands” on the federal judiciary that could not be met without an increase in the number of district court judges nationwide. Accordingly, he urged Congress to make the Judicial Conference of the United States’ recommendation for the creation of 51 additional district court judgeships a priority in the coming legislative term.

V. Legislative Update - The 1979 Amendments
By 1979, Congress was prompted to reconsider the Speedy Trial Act’s time limit and sanctions provisions in light of the district courts’ experience in implementing the Act during the four year phase-in period. In separate proposed bills, the Department of Justice and the Judicial
Conference recommended that the time limits be expanded overall from 100 days (30 days from arrest to indictment, 10 days from indictment to arraignment, and 60 days from arraignment to trial) to 180 days (60 days from arrest to indictment and 120 days from indictment to trial). Both the Senate and House Judiciary Committees rejected an expansion of the time limits, with the House Committee specifically noting that compliance over the four year phase-in period was high, and that the judicial emergency provisions provided an adequate remedy in particular districts experiencing difficulty complying with the time limits.

Nonetheless, realizing that a compromise was necessary, the Senate passed S. 961 as amendments to the Speedy Trial Act of 1974. The highlight of the Senate bill, as later amended by the House, was its most controversial aspect: a one-year suspension of the implementation of the dismissal sanction. The reasons for imposing the suspension were many: to allow more time for the over 100 new district judgeships to be filled, to allow trial courts more time to settle into the permanent time limits, to send a firm message to those in favor of repealing the Speedy Trial Act that it “is here to stay”, and to allow all elements of the criminal justice system more time to study the impact of the Speedy Trial Act before “undertaking major surgery on this landmark legislation.” As Senator Bayh further noted in his remarks on the House floor, districts wishing to implement the sanctions provision immediately could apply to the circuit judicial council for approval to do so.

The dismissal sanction was not the only part of the Act that was tweaked in 1979. The amendments also merged the 10 day indictment-to-arraignment and 60 day arraignment-to-trial periods into one 70 day period. This action was taken in response to the House Committee’s finding that the separate 10 day indictment-to-arraignment period had caused undue travel hardships in sparsely populated districts and generally had made “little positive contribution” to the overall goals of the Act over the past four years.

The amendments effected additional changes to the provisions of the Act relating to exclusions of time, “ends of justice” continuances, and judicial emergency. Specifically, the bill added three new time periods to be excluded from calculation of speedy trial time limits, modified an existing exclusion, and clarified the process for seeking subsequent extensions of time due to judicial emergency. In an effort to gauge initial compliance with the Speedy Trial Act, and gather “the necessary data and case experience to permit an informed judgment as to whether the basic principles embodied in the act are sound and worthy of permanence,” Congress also expanded district reporting and data collection requirements.

VI. The Speedy Trial Act - 35 Years Later

The Speedy Trial Act has remained substantially unchanged since Congress’ update in 1979. In a 2006 opinion, the United States Supreme Court proclaimed that because the Act also aims to protect the public’s interest in bringing defendants to justice in a timely manner, defendants cannot prospectively waive its application. What follows is a description of the prominent provisions of the Act in its current form.

18 U.S.C. § 3161 - Time Limits and Exclusions

In General

Judges must, after consultation with counsel from both sides, set criminal trials, “at the
earliest practicable time,” for days certain or, at least, list them for trial on a short-term calendar “so as to assure a speedy trial.”

**Pre-Indictment or Information**

Prosecutors have 30 days from the date of arrest or service of a summons to file a charging instrument against an individual suspected of committing an offense. If the offense is a felony, and no grand jury has convened during the 30-day period following arrest or service of a summons, prosecutors have an additional 30 days to file an indictment.

**Post-Indictment or Information**

If the accused enters a plea of not guilty, trial must commence within 70 days from the filing date of the charging instrument or from the date of the defendant’s first appearance, whichever is later. Trial cannot commence less than 30 days from the date the defendant first appears through counsel or elects to proceed pro se, unless the defendant consents in writing. The filing of a superceding indictment does not, by itself, require this 30-day period to begin anew.

If the accused enters a plea of guilty or nolo contendere, and subsequently withdraws that plea, the defendant is deemed indicted for purposes of the Act on the day the order permitting him or her to withdraw the plea becomes final.

**Dismissal of Indictment/Information**

The speedy trial time limits begin anew when charges that have been dismissed, either on motion of the defendant or on the initiative of the prosecutor, are refiled against the same individual for the “same offense or an offense based on the same conduct or arising from the same criminal episode.”

**Retrial After Mistrial, Order for New Trial, Appeal, or Collateral Attack**

Retrial of a defendant must take place within 70 days from the date the action “occasioning” the new trial becomes final. In the case of retrial after appeal or collateral attack, trial may be delayed up to 180 days following the date the action “occasioning” the new trial becomes final only if trial within 70 days is impractical due to unavailability of witnesses or “other factors resulting from passage of time.”

**Defendants Already in Custody**

If a prosecutor knows a defendant is already incarcerated on other charges, he or she must promptly attempt to secure the presence of the defendant for trial or file a detainer requesting that the defendant be advised of his right to demand a speedy trial.

**Defendants Absent on Day of Trial**

If the defendant is absent on the day of trial, but subsequently appears before the court on a bench warrant or other process or surrenders more than 21 days after the date set for trial, that appearance will be deemed a first appearance for the purposes of speedy trial, i.e., trial must generally commence within 70 days. If the defendant subsequently appears before the court 21
days or less after the date set for trial, the original 70-day time limit still applies but is extended by the amount of the time the defendant was absent plus additional 21 days.\textsuperscript{95}

**Excludable Periods of Delay**

There are numerous avenues by which both the time for filing a charging instrument and the time for commencing trial can be enlarged. Delay resulting from the following instances is excluded for purposes of computing the prescribed time limits: (1) other proceedings concerning the defendant;\textsuperscript{96} (2) deferred prosecution for the purpose of allowing the defendant to demonstrate good conduct;\textsuperscript{97} (3) the absence or unavailability of the defendant or an essential witness;\textsuperscript{98} (4) mental incompetence or physical incapacity of the defendant;\textsuperscript{99} (5) time elapsed between the Government’s dismissal of charges and institution of new charges for the same offense;\textsuperscript{100} (6) the defendant is joined for trial with a co-defendant for whom the speedy trial time limits have not run, and severance has not been granted;\textsuperscript{101} (7) an order by the district court upon finding by a preponderance of the evidence that an official request has been made for evidence located in a foreign country (not to exceed one year);\textsuperscript{102} and (8) continuance granted by the trial judge on the basis that the ends of justice outweigh the best interest of the public and the defendant in a speedy trial.\textsuperscript{103}

In deciding whether to grant an “ends of justice” continuance, the trial judge must consider at least the following factors: (a) whether the failure to grant a continuance would likely make continuation of the case impossible or result in a miscarriage of justice; (b) whether the case is so unusual or complex so as to render it unreasonable to expect the parties to adequately prepare for trial within the established time limits; (c) whether, in cases in which arrest precedes indictment, the arrest occurs at such a time that the grand jury proceeding cannot conclude within the established time limits, or the facts upon which the indictment is based are unusual or complex; and (d) whether, in a case which is not unusual or complex, failure to grant a continuance would deny the defendant a reasonable time to obtain counsel, would unreasonably deny continuity of counsel, or would deny the Government or the defendant time reasonably necessary to effectively prepare for trial.\textsuperscript{104} Furthermore, continuances are not to be granted due to general court docket congestion, lack of diligent preparation, or the prosecution’s failure to obtain available witnesses.\textsuperscript{105}

**18 U.S.C. § 3162 - Sanctions**

**Failure to Timely File Charging Instrument**

If the prosecutor fails to file an indictment or information within the established time limits, including any applicable excludable periods of delay, the charges against the accused must be dismissed.\textsuperscript{106} It is within the trial court’s discretion whether to dismiss the charges with or without prejudice.\textsuperscript{107} In making this decision, the trial court is required to consider the following factors: (a) the seriousness of the offense; (b) the facts and circumstances which led to the dismissal; and (c) the impact of reprosecution on the administration of the speedy trial time limits and the administration of justice.\textsuperscript{108} A court’s failure to consider these factors or to find factual or evidentiary support for its decision may be considered an abuse of discretion.\textsuperscript{109}
Failure to Timely Bring Defendant to Trial

If the defendant is not tried within the established time limits, the defendant may file a motion to dismiss the charges against him or her. If the defendant sustains his or her burden of supporting the motion, and the prosecutor is unable to carry the Government’s burden of going forward with evidence in support of any exceptions to the speedy trial time limit, the indictment or information must be dismissed. As before, it is within the trial court’s discretion whether to dismiss the charges with or without prejudice. The defendant waives his or her right to dismissal in this instance if the motion is not filed prior to trial or entry of a plea of guilty or nolo contendere.

Sanctions for Counsel

Counsel may face sanctions for bad behavior, such as filing motions solely for purposes of delay, obtaining a continuance by submitting materially false statements, or otherwise willfully failing to proceed to trial. Sanctions include pay cuts for appointed counsel, fines for prosecutors and retained defense counsel, and disciplinary committee referrals.

18 U.S.C. § 3164 - High Risk or Detained Defendants

Trial priority is to be given to defendants who are either being detained solely to await trial or have been released pending trial but have been designated by the Government as high risk. These individuals must be tried no later than 90 days following either the beginning of continuous detention or designation of a released individual as high risk. If this does not occur, and neither the Government nor defense counsel is at fault, the court is required to automatically review the conditions of the defendant’s release. No detainee can be held to await trial after the expiration of the 90-day period. If a defendant who has been released pending trial is found to have intentionally delayed trial beyond the 90-day period, the court may modify the nonfinancial conditions of his or her release in order to insure his or her presence at trial.


In the event a particular district court is unable to provide a speedy trial due to court congestion, the chief judge of the district may apply to the circuit judicial council for a suspension of the time limits. If the circuit judicial council is unable to recommend a reasonably available remedy for the congestion, it may grant a suspension of the 70-day indictment-to-trial time limit for a period not to exceed one year. During the suspension period, the indictment-to-trial time limit cannot be stretched beyond 180 days, and the arrest-to-indictment period, the sanctions provisions, and the 90 day trial period for detainees continue to apply in full force. Should a district’s chief judge deem the need for a suspension a situation “of great urgency,” he or she may unilaterally suspend the time limits for a period not to exceed thirty days, provided that he or she applies to the circuit judicial council for a suspension within ten days of entry of the suspension order.
VII. A State Speedy Trial Model

In contrast to the Federal system, Florida recognizes separate rights of the accused and the State to demand a speedy trial. The defendant’s right is embodied in Florida’s Rules of Criminal Procedure, while the State’s right has been made explicit by the Florida Legislature.

Defendant’s Right

Under Florida’s Rules of Criminal Procedure, the haste with which a defendant must be tried depends upon whether the defendant chooses to file and serve a specific demand for speedy trial.

No Demand

If the defendant chooses not to demand a speedy trial, he or she must still be tried within 90 days of being taken into custody if charged with a misdemeanor or 175 days of being taken into custody if charged with a felony. These time limits apply regardless of whether the accused is confined in a correctional institution or released on bond, recognizance, or other pretrial diversion program. Furthermore, should a defendant be charged with both a felony and misdemeanor that have been consolidated for disposition before the circuit court, the 175-day time limit for felonies applies.

Demand for Speedy Trial

A demand must be filed and served on the prosecuting authority within 60 days of arrest. Both the State and the defendant are bound by the filing of a demand. As such, any demand that is not filed in good faith, i.e., by a defendant who has not diligently investigated his or her case or who has not timely prepared for trial, may be stricken upon a motion by the prosecutor. Furthermore, a demand may not be withdrawn except by order of the court, with consent of the prosecutor, or for good cause shown.

Upon receipt of a properly filed demand, the court must hold a calendar call no later than 5 days following the filing of a demand to announce the demand and set the case for trial. At the calendar call, the case must be set for trial commencing no less than 5 days but no more than 45 days from the date of the calendar call. In all, the defendant is entitled to seek a remedy for deprivation of his or her right to speedy trial if trial does not commence within 50 days of the filing of the demand.

Effect of Mistrial, Appeal, or New Trial

A defendant must be brought to trial within 90 days from the date of a declaration of a mistrial, a court order granting a new trial, a court order granting a motion in arrest of judgment, or a mandate, order or notice from a reviewing court that requires a new trial. Failure to abide by this requirement entitles the defendant to seek a remedy for deprivation of his or her speedy trial right.

Extensions of Time; Delay and Continuances

Extensions of time may be sought where the time for trial has not yet expired. They can be procured either by stipulation or by court order. Court orders can be entered for the
following reasons: (1) a finding of exceptional circumstances; (2) good cause shown by the defendant; or (3) a finding of reasonable and necessary delay due to other proceedings involving the defendant, such as mental competency evaluations and trial on other pending charges.\textsuperscript{141}

\textit{Defendant’s Remedy for Expiration of Speedy Trial Time}

If trial does not commence within the prescribed time limits, excluding any applicable extensions of time, it is the defendant’s duty to notify the court and the State by filing and serving a “Notice of Expiration of Speedy Trial Time.”\textsuperscript{142} The court must hold a hearing within 5 days of the notice’s filing and, if no reasons for continuance exist, must order trial to commence within 10 days.\textsuperscript{143} Reasons for continuance include extensions of time granted by the court or by stipulation, delay caused by the defendant or counsel, unavailability of the defendant, or an invalid demand for speedy trial.\textsuperscript{144} Should trial not commence within that timeframe, due to no fault of the defendant, the defendant “shall be forever discharged from the crime.”\textsuperscript{145}

\textit{State’s Right}

The State’s right to demand a speedy trial is extremely narrow, only accruing if all of the following conditions are satisfied: (a) the State has met its discovery obligations; (b) the charge is a felony or misdemeanor; (c) the court has granted at least three continuances over the objection of the state attorney; and (d) the case is not resolved within 125 days after formal felony charges are filed (45 days if a misdemeanor).\textsuperscript{146}

Once a demand by the State is filed, the court must hold a calendar call within 5 days, and then must schedule trial no sooner than 5 days but no later than 45 days subsequent.\textsuperscript{147} Trial can be delayed in a number of circumstances, however. For example, if a necessary and properly served witness fails to appear for a deposition after the entry of a court order to appear, the court may grant an extension of time for up to 30 days, upon the defendant’s motion.\textsuperscript{148} Furthermore, if the court grants defense counsel’s motion to withdraw and appoints new counsel, an extension of between 30 and 70 days may be granted.\textsuperscript{149} Finally, the court is expressly permitted to grant any continuance necessary to preserve the defendant’s right to due process.\textsuperscript{150}
Chief United States District Judge, United States District Court, Middle District of Florida. I thank my law clerk, Kate Taylor, for her research and editorial assistance.

1 U.S. CONST. amend. VI.


5 See, e.g., U.S. v. Marion, 404 U.S. 307 (1971) (speedy trial guarantee did not apply to 3 year pre-indictment delay); Dickey v. Fla., 398 U.S. 30, 38 (1970) (eight year delay in bringing defendant to trial was “intolerable as a matter of fact and impermissible as a matter of law.”); Smith v. Hooey, 393 U.S. 374 (1969) (prosecution was not absolved of speedy trial obligations simply because defendant was imprisoned in another jurisdiction); Klopfer, 386 U.S. at 223 (speedy trial right is a fundamental right applicable to the States via the Fourteenth Amendment); Ewell, 383 U.S. at 120 (delay of 19 months between original arrest and hearing on new indictment was not a speedy trial violation).

6 Marion, 404 U.S. at 320 (“[I]t is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment.”).


8 Id. at 521-22.

9 Id. at 519.

10 Id. at 522-23.

11 Id. at 524. The doctrine dictates that “a defendant waives any consideration of his right to speedy trial for any period prior to which he has not demanded a trial.” Id. The Court ultimately rejected the doctrine because it was inconsistent both with prior precedent regarding waiver of constitutional rights and with the interests of defendants, society, and the Constitution. Id. at 525, 528.

12 Barker, 407 U.S. at 523 (finding that precise quantification of the speedy trial right would require the Court to engage in prohibited legislative or rulemaking activity).

13 Id. at 530.

14 Id. at 530-31.
The balancing test was later extended by the Court to determinations of the extent to which appellate review of pretrial motions contributed to pretrial delay. \textit{U.S. v. Loud Hawk}, 474 U.S. 302, 314 (1986).

Unlike the United States Supreme Court, which found that it was constitutionally barred from prescribing precise time limits, the advisory committee merely recognized the need for varying approaches to protection of the speedy trial right based on the degree of court congestion. \textit{Id.}

\textit{See id.}

Specifically, the Committee found that the judiciary’s case-by-case approach to speedy trial was an unsatisfactory remedy for a more global problem, and that Rule 50(b) to the Federal Rules of Criminal Procedure didn’t impose tough enough restraints on the other components of the criminal justice system. \textit{Id.}

\textit{Id. at S24665-6.}

\textit{Id. at S24666}.

\textit{Id.}

\textit{Id. at S24660} (identifying Senate Bills 3936, introduced in the 91st Congress, and 895, introduced in February 1971, as important precursors to Senate Bill 754).
(Id. (recounting receipt of comments from 225 “prominent members of the bench and bar around the country,” and testimony from 20 additional witnesses, including then-Assistant Attorney General William H. Rehnquist on behalf of the Justice Department).

36 Id. at S24661.

37 Id. at S24660.

38 See S. 754, 93d Congress (as passed by Senate, July 23, 1974).


40 Id. at 1.

41 Id. at 4-6 (discussing the shortcomings of United States Supreme Court decisions like Barker v. Wingo, 407 U.S. 514 (1972), and Rule 50(b) of the Federal Rules of Criminal Procedure).

42 Id. at 10-11 (finding that although all criminal justice system participants were aware of the problem of delay, they tended “to direct the blame for delay to another component of the system.”).

43 Id. at 9.

44 Id. at 7-8.

45 Id. at 4.

46 See id. at 2.


48 120 Cong. Rec. H41793-95. The debate on the floor indicates that Rep. Cohen and others who served on the Judiciary Committee only reluctantly supported these amendments as a compromise to get the bill passed before the end of the session. Id. at H41794 (statement of Rep. Cohen) (noting that the sanctions provision was “the most controversial section of the bill,” and offering the amendments “in the interest of seeing that this measure be passed, approved, and signed into law.”); id. (statement of Rep. Conyers) (recalling that the Committee approved the amendments “with a certain degree of reluctance,” but, “in the interest of time, because of the lateness of the calendar year . . . and because fo the Committee on the Judiciary’s other activities” the Committee deemed it prudent to approve them).

49 Id. at H41795.

50 Id. at H41777 (statement of Rep. Dennis) (suggesting that busy lawyers were going to have “a pretty tough time” complying with the new time limits “and that is not going to help justice in the
end.”); id. at H41790-1 (statement of Rep. Dennis) (warning the House that not extending the
time limits could “deny people due process of law simply because they are being rushed into trial
too fast and their lawyers cannot get around to taking care of their cases.”).

51 Id. at H41792 (defeating the amendment 30 votes to 18).

52 Id. at H41789-90. Rep. Gross remarked that “some courtrooms of the country are dark in the
afternoons, with the judges playing golf” and suggested that the Supreme Court’s summer recess
cause delay by “giving the Justices an opportunity to junket abroad and carry on various other
activities.” Id. In response, Rep. Conyers pointed out that it was inappropriate to levy sanctions
upon the courts without specific evidence of whether indeed the courts contributed to the delay.
Id.

53 Id. at H41595-6 (statement of Rep. Waggonner). Rep. Conyers explained in response that
although targeting the appellate process as a source of delay was “a possible area of
investigation,” the Committee aimed with this legislation to “start at the crux of the
problem”—the trial courts).

54 Id. at H41778.

55 Id. at H41779.

56 See id. at H41780 (statement of Rep. Metcalfe) (“It is past time that we begin to reform our
criminal justice system so that we can get innocent men out of jail as soon as humanly possible,
so that we can convict those who are found guilty without delay and so that we can guarantee all
Americans the right to a speedy trial that the Constitution mandated nearly 200 years ago.”); id.
(statement of Rep. Drinan) (speaking in favor of the legislation with “great enthusiasm”); id. at
H41781 (statement of Rep. Fish) (rising in “strong support” of the “necessary legislation”); id. at
H41781 (statement of Rep. Matsunaga) (suggesting that “a refusal of the Government to use its
great power to remedy . . . delay is as much an abuse of power as its taking affirmative steps to
defeat justice.”); id. at H41782 (statement of Rep. Frenzel) (stating that though the bill was “not
without some problems,” it was “badly needed” and “a good start.”); id. at H41793 (statement of
Rep. Bell) (referring to the bill as “a good bill” and “a reasonable, well-thought-out measure”).

57 Id. at H41796.

58 Id. at H41619.


60 Statement on Signing the Speedy Trial Act of 1974, 1 PUB. PAPERS 7-8 (January 4, 1975).

61 Id.

62 Id.
H. REP. NO. 96-390, at 4 (July 26, 1979) (indicating that the amendatory process was initiated by receipt of proposed bills from the Department of Justice and the Judicial Conference of the United States).

Id. at 6.

Id. at 5-6 (citing data from the Administrative Office of the U.S. Courts indicating that by the end of 1978, compliance with the permanent 30-10-60 time limits in the Federal courts was over 90 percent).

Id. at 6 (noting that up to July 1, 1979, eight district courts had applied for and received extensions under the judicial emergency provision).

Act of August 2, 1979, Pub. L. No. 96-43, § 6, 93 Stat. 327, 328-9 (1979) (extending effective date of sanctions provision to July 1, 1980); H. REP. NO. 96-390, at 8 (July 26, 1979). Senator Biden’s remarks on the House floor characterized the controversy this way: some believed the Act should continue as originally planned to allow the dismissal sanctions to drive compliance, while others “darkly predict[ed] nothing short of imminent disaster,” i.e., large-scale dismissals of unadjudicated criminal cases, if the time limits were not enlarged. 125 CONG. REC. S15454-5 (June 19, 1979).


Id. at S15469 (statement of Sen. Kennedy); see also id. at S15456 (statement of Sen. Biden) (referring to a General Accounting Office report entitled “Speedy Trial Act - Its Impact on the Judicial System Still Unknown,” and remarking that “the answer to the question, ‘Will the courts be able to achieve substantial compliance with the Speedy Trial Act, on time, without adverse consequences?’ is, we do not know. We are supposed to know, at this juncture, but we do not know.”).

Id. at S15468 (statement of Sen. Bayh).


Act of August 2, 1979, Pub. L. No. 96-43, § 4, 93 Stat. 327, 327-8 (1979); H. Rep. No. 96-390, at 10 (July 26, 1979) (discussing the addition of the following excludable delays: delays resulting from deferred prosecution under the now-defunct Narcotic Addict Rehabilitation Act, delays resulting from the court’s consideration of proposed plea agreements, and delays caused by transportation of the accused).

Act of August 2, 1979, Pub. L. No. 96-43, § 4, 93 Stat. 327, 328 (1979); H. Rep. No. 96-390, at 10 (July 26, 1979) (discussing the bill’s modification of the pretrial motions exclusion to extend only to the actual time consumed in a pretrial hearing).


18 U.S.C. § 3161(b). That the Act doesn’t cover pre-arrest delay is in line with the United States Supreme Court’s pre-Act declaration that the Sixth Amendment speedy trial right is not implicated until the defendant is indicted, arrested or officially accused. U.S. v. Marion, 404 U.S. 307, 313 (1971). The Court further solidified this principle post-Act in U.S. v. Loud Hawk, 474 U.S. 302, 311-2 (1986), where it held that neither “public suspicion” nor required appearance at an evidentiary hearing, nor enlistment of the assistance of counsel invoke the speedy trial right while an individual is otherwise free of restraints on his or her freedom.


Id. § 3161(c)(1).

Id. § 3161(c)(2).

U.S. v. Rojas-Contreras, 474 U.S. 231, 234-6 (1985). The United States Supreme Court recognized, however, that the defendant may seek an ends-of-justice continuance should the Government’s filing of a superceding indictment operate to prejudice his or her trial preparation. Id. at 236.
89 18 U.S.C. § 3161(i).

90 Id. § 3161(d)(1). In its 1982 decision in *U.S. v. McDonald*, 456 U.S. 1, the United States Supreme Court recognized this provision as support for its determination that the time between dismissal of military charges and subsequent indictment on civilian charges should be omitted for speedy trial purposes. *Id.* at 7 n.7.


92 *Id.*

93 *Id.* § 3161(j).

94 *Id.* § 3161(k)(1). A defendant is deemed absent “when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence.” *Id.* § 3161(h)(3)(B).

95 *Id.* § 3161(k)(2).

96 *Id.* § 3161(h)(1). This includes, but is not limited to, the following proceedings: (a) determination of physical capacity or mental competency; (b) trial on other charges; (c) interlocutory appeals; (d) pretrial motions (from filing to conclusion of hearing or “other prompt disposition”); (e) transfer of the case from another district; (f) transport of the defendant; (g) consideration by the court of a proposed plea agreement; (h) matters actually under advisement by the court (not to exceed 30 days). *Id.* With regard to (d) above, the Supreme Court of the United States has clarified that “all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is ‘reasonably necessary’” should be excluded from the 70-day trial preparation period. *Henderson v. U.S.*, 476 U.S. 321, 330 (1986). The Court further held that the time after a hearing on a pretrial motion “where a district court awaits additional filings from the parties that are needed for proper disposition of the motion,” is also properly excluded. *Id.* at 331.

97 18 U.S.C. § 3161(h)(2). The deferred prosecution must be pursuant to a court-approved written agreement between the defendant and the prosecutor. *Id.*

98 *Id.* § 3161(h)(3).

99 *Id.* § 3161(h)(4).

100 *Id.* § 3161(h)(5).

101 *Id.* § 3161(h)(6). This time period must be “reasonable.” *Id.*

102 *Id.* § 3161(h)(8).
Id. § 3161(h)(7)(A). The judge must set forth his or her reasons for granting the continuance in the record, either orally or in writing. Id. Failure to record the reasons for a continuance is not harmless error, and renders the time span of the continuance non-excludable for purposes of the 70-day trial preparation period. Zedner v. U.S., 547 U.S. 489, 506-09 (2006).


Id. § 3161(h)(7)(C).

Id. § 3162(a)(1). This sanction had been endorsed two years prior to the passage of the Act by the United States Supreme Court in Strunk v. U.S., 412 U.S. 434 (1973). In Strunk, the Court rejected a remedy fashioned by the Eighth Circuit Court of Appeals for a speedy trial violation—reduction of the defendant’s sentence. Id. at 440. In doing so, the Court emphasized, “[i]n light of the policies which underlie the right to a speedy trial, dismissal must remain . . . the only possible remedy.” Id. (internal quotations and citations omitted).


Id.


Id.

Id.

Id.

Id. § 3162(b).

Id.

Id. § 3164(a).

Id. § 3164(b). The 90 day term excludes any periods of delay enumerated in § 3161(h). Id.

Id. § 3164(c).

Id.

Id.

Id. § 3174(a).
Id. § 3174(b).

Id.

Id. § 3174(e).

See Fla. R. Crim. Proc. 3.191.


Fla. R. Crim. Proc. 3.191(a). These time periods commence on the day the accused is taken into custody, i.e., either arrested on the crime charged or served with a summons to appear in lieu of arrest. Fla. R. Crim. Proc. 3.191(d) (defining “custody”). Furthermore, trial is considered to have commenced when a jury panel is sworn or, if a jury trial was waived, when the trial proceedings begin before the judge. Fla. R. Crim. Proc. 3.191(c) (defining “commencement of trial”).

Fla. R. Crim. Proc. 3.191(a). If the defendant is incarcerated outside the jurisdiction of the prosecutor, his or her speedy trial time limits do not commence until he or she returns to the jurisdiction and written notice of the return is filed and served on the prosecutor. Fla. R. Crim. Proc. 3.191(e). A speedy trial demand filed before the defendant returns to the jurisdiction is invalid. Id.

Fla. R. Crim. Proc. 3.191(f).

Fla. R. Crim. Proc. 3.191(b).

Fla. R. Crim. Proc. 3.191(g).

Id.

Id. Nonreadiness for trial does not constitute good cause unless it is due to unforeseen circumstances that arose after the demand was filed. Id.

Fla. R. Crim. Proc. 3.191(b)(1). The failure of the court to hold a calendar call within this timeframe upon receipt of a properly filed demand does not toll the time limits established for trial. Fla. R. Crim. Proc. 3.191(b)(3).

Fla. R. Crim. Proc. 3.191(b)(2).

Fla. R. Crim. Proc. 3.191(b)(4). The prosecution cannot avoid the application of the speedy trial time limits by entering a nolle prosequi on a crime charged and then bringing new charges based on the same conduct or criminal episode. Fed. R. Crim. Proc. 3.191(o).

Fla. R. Crim Proc. 3.191(m).
Exceptional circumstances include the following: (a) unexpected illness, incapacity or absence of key witnesses; (b) unusual complexity of the case; (c) unavailability of critical evidence; (d) unexpected developments in the case; (e) accommodation of a co-defendant; or (f) defendant’s interference with the prosecution’s trial preparation. Fla. R. Crim. Proc. 3.191(l). General court congestion, lack of preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays do not constitute exceptional circumstances. Id.

This notice is timely only if filed and served on or after the expiration date; a notice filed early is invalid and must be stricken on the motion of the prosecutor. Fla. R. Crim. P. 3.191(h).

Discharge occurs upon motion of the defendant or the court, id., and bars prosecution of the crime charged as well as all other crimes arising from “the same conduct or criminal episode as a lesser degree or lesser included offense,” Fla. R. Crim Proc. 3.191 (n).

Fla. Stat. § 960.0015(1).

Id. § 960.0015(2).

Id. § 960.0015(3)(a).

Id. § 960.0015(3)(b).

Id. § 960.0015(2), (3).