
ABA Standards for Criminal Justice
Third Edition

**Speedy Trial
and
Timely Resolution of Criminal Cases**



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and
Timely Resolution of Criminal Cases**

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The commentary contained herein does not necessarily represent the official position of the ABA. Only the text of the black-letter standards has been formally approved by the ABA House of Delegates as official policy. The commentary, although unofficial, serves as a useful explanation of the black-letter standards.

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Note on Abbreviations:

References to related standards in text and footnotes are by initials of the organizations that drafted them. The initials, organizations, standards and year of publication follow:

ABA (American Bar Association):

Criminal Justice Standards:

Defense Function (1993)

Discovery (1996)

Joinder and Severance (1980)

Pleas of Guilty (1999)

Pretrial Release (200_)

Prosecution Function (1993)

Providing Defense Services (1992)

Special Functions of the Trial Judge (2000)

Speedy Trial (1968, 1980)

Trial by Jury (1996)

Model Code of Judicial Conduct (2004)

Standards Relating to Court Organization (1990, 2005)

Standards Relating to Trial Courts (1992)

NAC (National Advisory Commission on Criminal Justice Standards and Goals):

Courts (1973)

NCCUSL (National Conference of Commissioners on Uniform State Laws):

Uniform Rules of Criminal Procedure (1987)

NDAA (National District Attorneys Association):

National Prosecution Standards (1991)

Note on Use of Brackets:

The Standards call for setting specific time periods for certain events. Brackets around a time period, e.g., [six hours], [90 days], indicate that the time period is generally appropriate but may not apply to all situations or jurisdictions. When the bracketed time period does not apply, the Standards anticipate substitution of an appropriate time period.

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**ABA CRIMINAL JUSTICE STANDARDS
SPEEDY TRIAL AND TIMELY RESOLUTION
OF CRIMINAL CASES**

BLACK LETTER

PART I

GENERAL PRINCIPLES

Standard 12-1.1 *Purposes of the Standards on Speedy Trial and Timely Resolution of Criminal Cases*

(a) The *Standards on Speedy Trial and Timely Resolution of Criminal Cases* have three main purposes: (1) to effectuate the right of the accused to a speedy trial; (2) to further the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases; and (3) to ensure the effective utilization of resources.

(b) These standards should be read in conjunction with other ABA Standards for Criminal Justice, and with recognition that fairness and accuracy are essential components of the criminal justice process. The standards are not intended to emphasize speedy disposition of cases to the detriment of the interests of the parties and the public, including victims and witnesses, in the fair, accurate and timely resolution of cases. In implementing these standards in individual cases and in developing policies for overall management of caseloads, jurisdictions should seek to ensure that both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses, review documents, make appropriate motions, and conduct other essential aspects of case preparation.

Standard 12-1.2 **Importance of establishing both speedy trial rules and standards for timely resolution of criminal cases**

(a) **The right of an accused to a speedy trial is fundamental. It should be effectuated and protected by rule or statute that:**

(i) sets specific limits on the time within which either the defendant must be brought to trial or the case must be resolved through a non-trial disposition;

(ii) provides guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and

(iii) establishes appropriate consequences in the event that the accused's right to a speedy trial is denied.

(b) The public, including victims and witnesses has an interest in the timely resolution of criminal cases. From the commencement of a criminal case to its conclusion, any elapsed time other than reasonably needed for preparation and court events should be minimized. The public's interest should be expressed in formally adopted policies and standards that:

(i) establish goals for the timely resolution of criminal cases from commencement to disposition and for specific stages, taking into account the seriousness and complexity of different types of cases;

(ii) require monitoring of the performance of the courts and other organizational entities with respect to the goals; and

(iii) provide for public dissemination of data concerning organizational performance in relation to the goals.

Standard 12-1.3 Case differentiation

In establishing statutes or rules for speedy trial and goals and practices for timely resolution of criminal cases, jurisdictions should:

(a) take account of the relative seriousness and complexity of different types of cases; and

(b) distinguish between defendants in detention and defendants on pretrial release. The time limits concerning speedy trial for detained defendants should ordinarily be shorter than the limits applicable to defendants on pretrial release.

Standard 12-1.4 Systems approach

(a) These standards approach the issues of speedy trial and timely case resolution from a systemic perspective, recognizing that many different institutions, agencies, and individuals play key roles in criminal cases. In order for the purposes of the standards to be

achieved, the interests and perspectives of the following should be taken into account:

- (i) defendants;
- (ii) the public, including victims and witnesses;
- (iii) courts;
- (iv) prosecutors and defense counsel; and
- (v) law enforcement agencies, officials responsible for local detention facilities, pretrial services agencies, probation departments, and other organizations involved in or affected by the prosecution and adjudication of criminal cases.

(b) Jurisdictions should provide adequate resources to the institutions and agencies involved in criminal justice processes, in order to enable the purposes of these standards to be achieved.

Standard 12-1.5 Caseflow systems that will enable timely resolution of all criminal cases

These standards focus on the timely resolution of all criminal cases, including the large proportion of cases not resolved by trial. In order to utilize limited resources effectively, jurisdictions should design caseflow systems that enable an early assessment of the complexity and prospects for non-trial resolution of cases, and seek to facilitate the early resolution of cases not likely to be tried. Such caseflow systems should ensure that many cases are resolved rapidly, that trial continuances are minimized, that case scheduling functions with a high degree of certainty and predictability, and that the jurisdiction's speedy trial requirements and standards for timely resolution can be met.

PART II

DEFENDANT'S RIGHT TO A SPEEDY TRIAL

Standard 12-2.1 Speedy trial time limits

(a) A defendant's right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement of the trial or other

disposition of the case. The time limits should be expressed in days or months.

(b) The presumptive speedy trial time limit for persons held in pretrial detention should be [90] days from the date of the defendant's first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pretrial release should be [180] days from the date of the defendant's first appearance in court after either the filing of any charging instrument or the issuance of a citation or summons. Shorter presumptive speedy trial time limits should be set for persons charged with minor offenses.

(c) Certain periods of time should be excluded from the computation of time allowed under the rule or statute, as set forth below in Standard 12-2.3.

(d) Provision should be made for the court to determine, on motion of the prosecution or the defense or on its own motion, that a case is of such complexity that the presumptive speedy trial time limit should be extended in order to enable the parties to make adequate preparations for pretrial proceedings or for the trial itself. The court should give substantial weight to a motion for extension of the speedy trial limit on these grounds that is made, with good cause shown, by either the prosecution or the defense. In the event that a determination of complexity is made, the judge should establish a revised time limit and should state on the record the reasons for extending the time. A motion to extend the speedy trial time limit because of the complexity of the case should be made as soon as practicable.

Standard 12-2.2 Commencement and setting of speedy trial time limit

The speedy trial time limit should commence, without demand by the defendant, from the date of the defendant's first appearance in court after either a charge is filed or a citation or summons is issued, except that:

(a) If the charge is dismissed and thereafter the defendant is charged with the same offense or one arising out of the same criminal episode, or if a superseding charging instrument is filed by the prosecution in place of the original charge, then:

(i) the court should set a new speedy trial limit as set forth in Standard 12-2.1 or a shorter period. The new limit should

commence at the defendant's first appearance before the court on the new charge; and

(ii) in setting the new limit, the court should consider:

(A) the degree to which the new charge is different from the original charge;

(B) in the case of a superseding charging instrument, the extent to which the superseding instrument alleges offenses or material facts that were known to the prosecution at the time the original charge was filed;

(C) the period of time that has elapsed between the defendant's appearance on the first charge and the defendant's appearance on the second charge;

(D) the reason for the dismissal or the filing of the superseding instrument; provided, however, that if the court finds that the charge was dismissed to avoid the effect of the speedy trial time limit, the new charge should ordinarily be dismissed with prejudice;

(E) any other factor which, in the interests of justice, affects the time in which the defendant should be tried on the new charge;

(b) If the defendant is to be tried again following a mistrial, then a new reasonable speedy trial time limit should be set. The new speedy trial time limit period generally should be shorter than that applicable to the original charge and should commence from the date of the mistrial.

(c) If the defendant is to be tried again following a successful appeal or collateral attack on the conviction, then the speedy trial time limit should be that set forth in Standard 12-2.1 and should commence running from the date the order occasioning the retrial becomes final.

Standard 12-2.3 Excluded periods

(a) The following periods should be excluded in computing allowable time under the speedy trial rule or statute:

(i) time that elapses during other proceedings in the case against the defendant, including but not limited to an examination and hearing on competency, a period during which the defendant is incompetent to stand trial, and any interlocutory appeals;

(ii) time that elapses during a period when the defendant is on trial or engaged in proceedings in a different case in the same or a different court and was therefore physically unavailable;

(iii) time that elapses as a result of a continuance of the trial date granted at the request or with the consent of the defendant or the defendant's counsel. A defendant who has waived the right to counsel and is proceeding pro se should not be deemed to have consented to a continuance unless the defendant has been advised by the court of the right to a speedy trial and the effect of the defendant's consent;

(iv) time that elapses during any delay caused by the defendant's failure to appear for scheduled court proceedings;

(v) time when the defendant is joined for trial with a codefendant as to whom the speedy trial time limit has not run, if the court finds that, for reasons stated on the record, the interests of justice served by the joinder outweigh the defendant's right to have the trial held within the originally prescribed time limits; and

(vi) other reasonable periods of time when circumstances warrant exclusion of the time upon good cause shown or upon a determination by the court that the interests of justice served by excluding a period of time from the speedy trial time limit outweigh the defendant's right to have the trial held within the originally prescribed time limits. No period of delay resulting from a continuance granted by the court in accordance with this paragraph should be excludable unless the court sets forth, in the record of the case, its reasons for finding that the interests of justice served by the granting of the continuance outweigh the defendant's right to have the trial held within the originally prescribed time limits.

(b) Time required for the consideration and disposition of pretrial motions should not be automatically excluded in computing allowable time under the speedy trial rule or statute. Such time may be excluded by the court upon request or on its own motion pursuant to Standard 12-2.3(a)(vi).

(c) If the court sets a case for trial on a date that is outside the speedy trial time limit, and the defendant is on notice of the scheduled date, the defendant's failure to object to the trial date on speedy trial grounds should be deemed consent to an extension of the time allowed under the speedy trial rule or statute to the scheduled date. Time that elapses during such an extended period should be excluded in computing time under the speedy trial rule or statute.

Standard 12-2.4 Special procedures applicable to persons serving terms of imprisonment

To protect the right to speedy trial of a person serving a term of imprisonment either within or without the jurisdiction, it should be provided by rule or statute that:

(a) if the prosecuting attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a penal institution of that or another jurisdiction, the prosecuting attorney should promptly:

(i) undertake to obtain the presence of the prisoner for trial;

or

(ii) cause a detainer to be filed with the official having custody of the prisoner and request the official to so advise the prisoner and to advise the prisoner of the prisoner's right to demand trial;

(b) if an official having custody of such a prisoner receives a detainer, the official should promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs such official that the prisoner does demand trial, the official shall cause a certificate to that effect to be sent promptly to the prosecuting attorney who caused the detainer to be filed;

(c) upon receipt of such certificate, the prosecuting attorney should promptly seek to obtain the presence of the prisoner for trial; and

(d) when the official having custody of the prisoner receives from the prosecuting attorney a properly supported request for temporary custody of such prisoner for trial, the prisoner should be made available to that prosecuting attorney (subject, in cases of interjurisdictional transfer, to the traditional right of the executive to refuse transfer and the right of the prisoner to contest the legality of the delivery).

Standard 12-2.5 Computation of time for persons serving terms of imprisonment

The time for purposes of the right to a speedy trial in the case of a prisoner whose presence has been obtained while the prisoner is serving a term of imprisonment should commence running from the time the prisoner's presence for trial has been obtained. If the prosecuting attorney has unreasonably delayed causing a detainer to be filed with the custodial official or delayed seeking to obtain the prisoner's presence for trial in lieu of filing a detainer or upon receipt of a certificate of demand, such periods of unreasonable delay should also be counted in ascertaining whether the time has run.

Standard 12-2.6 Implementation of speedy trial time limits

In adopting a rule or statute that establishes speedy trial time limits, jurisdictions should provide that:

(a) an indictment, information, or other formal charging instrument should be filed within [30] days after the defendant's first appearance in court after either an arrest or issuance of a citation or summons, so that defendants receive prompt notice of the charges on which they will be held to answer and have adequate opportunity to prepare for pretrial motions and for trial within the speedy trial time limit period;

(b) at the time of the defendant's first appearance in court after either the filing of a charging instrument or the issuance of a citation or summons, the court should advise the defendant of the right to a speedy trial and of the presumptive speedy trial time limit, and should inform the defendant that the granting of a continuance requested or consented to by the defense will have the effect of lengthening the speedy trial time limit period; and

(c) at any time that action is taken that has the effect of extending the time otherwise allowed under the speedy trial rule or statute, the court should set forth its reasons on the record and should confirm, with the prosecution and the defense, the date by which a trial must be held or the case otherwise resolved. The new date should be noted on the record.

Standard 12-2.7 Effects of exceeding the speedy trial time limit period

(a) If a defendant who is in pretrial detention is not brought to trial and the case is not otherwise resolved before the expiration of time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should:

(i) order that the defendant be released from detention under conditions set in accordance with the *ABA Criminal Justice Standards on Pretrial Release* that best minimize the risk of flight and the risk of danger to the community or any person, and set the trial to begin on a date within the speedy trial time limit period for defendants on pretrial release, provided, however, that

(ii) if no condition or combination of conditions of release will reasonably protect the safety of the community or any person:

(A) the court should not order the defendant's release, and should set the trial to begin as expeditiously as possible, receiving the highest possible priority on the court's trial docket and in any event to begin within [15] days, unless the defendant requests a longer period not to exceed [45] days; and

(B) if the trial does not begin within the time set pursuant to subdivision (A), the court should order that the defendant be released from detention under conditions that, to whatever extent reasonably possible, minimize the risk of flight and the risk of danger to the community or any person, and reset the defendant's trial to begin on a date within the speedy trial time limit period for defendants on pretrial release.

(b) If a defendant who is on pretrial release is not brought to trial or the case is not otherwise resolved before the expiration of the time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should ordinarily dismiss the charges with prejudice, provided, however, that:

(i) after affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit for a period not to exceed [30] days beyond the date on which the

expiration of time is determined by the court, unless the defendant requests a longer period not to exceed [75] days.

(ii) In determining whether and for what period to order such an extension, the court should consider the totality of the circumstances, including:

(A) the gravity of the offense;

(B) the reasons for the failure to bring the defendant to trial within the previously-established time limit;

(C) the extent to which the prosecution or the defense is responsible for the delay; and

(D) the extent of the prejudice to the interests of the defense, the prosecution, or the public that may result from the extension of time or the dismissal of the charges.

(iii) If the court sets an extended period of time pursuant to this paragraph but the trial does not commence within the extended period, the charges should be dismissed with prejudice.

(c) In making a determination concerning actions taken with respect to detention, dismissal, or fixing a date for the commencement of trial pursuant to this standard, the court should set forth, on the record, the reasons for its ruling.

(d) Dismissal of the charge(s) with prejudice pursuant to this standard should forever bar prosecution for the offenses charged and for any other offense required to be joined with that offense.

PART III

STANDARDS FOR TIMELY RESOLUTION OF CRIMINAL CASES

Standard 12-3.1 The public's interest in timely case resolution

The interest of the public, including victims and witnesses, in timely resolution of criminal cases is different from the defendant's right to a speedy trial. This interest should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial. Reasons for developing effective policies and standards aimed at timely resolution of criminal cases include:

- (a) preserving the means of proving the charge(s) against the defendant;**
- (b) maximizing the deterrent effects of prosecution and conviction;**
- (c) increasing the likelihood that rehabilitative purposes of a sentence imposed if the defendant is convicted will be achieved;**
- (d) minimizing the length of the periods of anxiety for victims, witnesses and defendants, and their families;**
- (e) avoiding extended periods of pretrial freedom for defendants who pose risks of public safety or risks of flight;**
- (f) reducing repetitious handling and review of files by police officers, prosecutors, defense counsel, judges, court staff, and others involved in cases;**
- (g) reducing costs for jail operation (and avoiding or minimizing the costs of new jail construction) as the length of pretrial detention is minimized for defendants held in custody;**
- (h) reducing the caseload pressures on pretrial services agencies, as the length of time on supervised release is minimized for released defendants;**
- (i) better utilizing limited resources, and enhancing the opportunity for all of the institutions, agencies, and practitioners involved in criminal case processing to address high priority cases and issues; and**
- (j) increasing public trust and confidence in the justice system.**

Standard 12-3.2 Goals for timely case resolution

(a) Each jurisdiction should develop and adopt goals and policies that provide a framework for assuring that all criminal cases are resolved within a time period that is appropriate for the seriousness and complexity of the case.

(b) Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (2) the time periods between major case events. In establishing these goals, jurisdictions should take account of the seriousness and complexity of cases of different types.

(c) Goals for timely resolution of criminal cases should be developed collaboratively, with involvement of all of the institutions and agencies that have roles in criminal case processing in the jurisdiction, and with the participation of members of the public.

Leaders of all of the institutions and agencies involved should participate in the process, should support the standards that are developed, and should seek to establish policies and procedures within their own organizations that will help achieve the standards. The jurisdiction's goals for timely resolution should address at least the following time periods:

(i) arrest to first appearance;

(ii) citation to first appearance;

(iii) first appearance to filing of an indictment, information or other formal charging document in the court in which the charge is to be adjudicated;

(iv) first appearance or filing of the formal charging document to completion of pretrial processes (i.e., completion of all discovery, motions, pretrial conferences, and plea, dismissal, or other disposition in cases that will not go to trial);

(v) completion of pretrial processes to commencement of trial or to non-trial disposition of the case;

(vi) verdict or plea of guilty to imposition of sentence; and

(vii) arrest or issuance of citation to disposition, defined for this purpose as plea of guilty, entry into a diversion program, dismissal, or commencement of trial.

(d) Goals for timely resolution of criminal cases are intended to provide guidance for judges, counsel, court staff, officials in criminal justice agencies, defendants, witnesses, general government, and the public concerning the scheduling of criminal cases and management of criminal caseloads. The establishment of such goals should not create any rights for defendants or others.

Standard 12-3.3 Monitoring and accountability

(a) Each jurisdiction should establish procedures to monitor the performance of the system (and of each of the organizational entities that have responsibility for particular aspects of case processing) in relation to the goals for timely case resolution. Feedback should be provided to the leaders of the courts, the prosecutor's office, the defense bar, law enforcement agencies, other criminal justice agencies, and general government.

(b) Information about the performance of the system in relation to the goals for timely case resolution should be made available to the public on a regular basis.

Standard 12-3.4 Consistency of timely resolution standards with other justice system policy objectives

In adopting and implementing standards for timely resolution of criminal cases, jurisdictions should ensure that the standards and the policies used to implement them are consistent with the public's interests in the fair and effective prosecution and defense of criminal cases. The system should be structured to enable expeditious resolution of minor cases and of cases that are not complex, while allowing sufficient time for those that will involve relatively complex pretrial processes or extensive trial preparation.

PART IV

**ORGANIZING JUSTICE SYSTEM RESOURCES
TO ACHIEVE TIMELY RESOLUTION OF CRIMINAL CASES**

Standard 12-4.1 Operational goals to guide criminal caseload

Each jurisdiction should develop and adopt operational goals, for the system as a whole and for the organizational entities involved in the processing of criminal cases, to guide overall caseload management and case scheduling and to help assure fairness and due process of law. Goals should be established in at least the following areas:

- (a) timely resolution of cases, as described in Standard 12-3.2;**
- (b) firmness/reliability of case scheduling, focused on establishing an expectation that court events will take place when scheduled; and**
- (c) timeliness, accuracy, and completeness of the information entered into court records and into automated management information systems that support case scheduling and caseload management.**

Standard 12-4.2 Caseflow management practices and procedures

Each jurisdiction should develop caseflow management practices and procedures that will enable it to meet case processing time standards and speedy trial requirements. The policies and procedures should be set forth in an overall plan for the jurisdiction. Portions of the plan that are directly relevant to the operations of a court or other organizational entity involved in criminal case processing should be incorporated into operations manuals or similar guides for use by practitioners.

Standard 12-4.3 Jurisdictional plans for effective criminal caseflow management: essential elements

Elements of a plan for effective overall criminal caseflow management in a local jurisdiction should include:

(a) rapid preparation and transmission, to the prosecutor, of good quality police incident/arrest reports;

(b) rapid retrieval of prior record information about the arrested person, using speedy and reliable identification and record retrieval technology;

(c) rapid preparation of pretrial investigation reports on arrested defendants by a pretrial services agency, and utilization of these reports by judicial officers in promptly setting release conditions for arrested persons;

(d) rapid turnaround of forensic laboratory test results, especially for the testing of suspected drugs seized pursuant to an arrest;

(e) effective early case screening and realistic charging by prosecutors;

(f) early appointment of defense counsel for eligible defendants; for other cases, court procedures that ensure prompt participation by counsel for the defendant;

(g) early provision of discovery, consistent with the provisions governing discovery set forth in the *ABA Criminal Justice Standards on Discovery*;

(h) early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case;

(i) early case scheduling conference conducted by the assigned judicial officer to:

- (i) review the status of discovery and negotiations concerning possible non-trial disposition;**
- (ii) schedule motions; and**
- (iii) make any orders needed;**
- (j) case scheduling practices that use techniques of differentiated case management to facilitate expeditious disposition of simple cases, enable rapid identification of cases likely to require more attorney time and judge attention, and make good use of limited courtroom and lawyer preparation time;**
- (k) case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage of the case by the judge in consultation with the prosecutor and defense counsel;**
- (l) early filing and disposition of motions, including motions requiring evidentiary hearings;**
- (m) close monitoring of the size and age of pending caseloads, by the court and the prosecutor's office, to ensure that case processing times in individual cases do not exceed the requirements of the speedy trial rule and that case processing time standards are being met for the overall caseload;**
- (n) a policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the cases;**
- (o) procedures enabling resolution of all charges pending against a defendant, whether in the same case or in different cases and whether in the same court or a different court of the state, provided that defense counsel and the prosecutor(s) who filed the charges agree to the consolidation of the cases; and**
- (p) elimination of existing case backlogs (i.e., cases pending longer than the established case processing time standards), following a backlog reduction plan developed collaboratively by the court, the prosecutor's office, the defense bar, and law enforcement and other criminal justice agencies involved in and affected by criminal case processing.**

Standard 12-4.4 Acquisition and use of information for case processing

Jurisdictions should seek to use modern information technology to enable the courts and all of the other organizations involved in the criminal caseload process to rapidly gather, store, disseminate, and retrieve information about cases, and should structure the flow of information to:

(a) enable the prosecution and defense to obtain reliable information about the charge, the evidence, and the defendant as rapidly as possible for purposes of case preparation, negotiation, and trial; and

(b) enable the court to have reliable information upon which to make decisions concerning the pretrial custody or release status of the defendant at the time of initial appearance and, thereafter, to make informed decisions concerning possible diversion, sentence, or other disposition.

Standard 12-4.5 Court responsibility for management of calendars and caseloads

(a) Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. The court should exercise responsibility for case scheduling and for the expeditious resolution of all cases beginning at the time of first appearance, taking account of information relevant to case scheduling that may be provided by both the prosecutor and defense counsel. Continuances should be granted only by a judicial officer, on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.

(b) The court should establish mechanisms and procedures to promote the resolution of all cases within the time periods established by applicable management goals and without exceeding

the time limits of the speedy trial rule or statute. Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.

**ABA CRIMINAL JUSTICE STANDARDS
SPEEDY TRIAL AND TIMELY RESOLUTION
OF CRIMINAL CASES**

BLACK LETTER WITH COMMENTARY

INTRODUCTION

The American Bar Association first adopted Standards on *Speedy Trial* in 1968,¹ and those Standards were influential in catalyzing action by legislatures and state supreme courts over the next decade. During the next decade, a number of states drew upon the Standards in adopting a new speedy trial statute or rule or in revising speedy trial provisions already on the books, and Congress enacted the Federal Speedy Trial Act of 1974.² The Second Edition of the *Speedy Trial* Standards, adopted in 1978, made only a few minor changes in the original black letter Standards, though the commentary was expanded and included new citations to a number of court decisions interpreting different speedy trial statutes and rules.³ From 1978 until these Third Edition Standards were approved by the ABA House of Delegates in 2004 there were no substantive changes in the Standards.

In the nearly four decades since the *Speedy Trial* Standards were first adopted, there have been a number of significant developments relevant to protection of the defendant's right to a speedy trial and, more broadly, to the interests of the public, including victims and witnesses, in the timely resolution of criminal cases. These have included a large rise

1. American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Speedy Trial – Approved Draft, 1968* (New York: Institute for Judicial Administration, 1968).

2. The Federal Speedy Trial Act is codified in 18 U.S.C. Sections 3161-3174. As of February 1978, all fifty states and the District of Columbia had some type of speedy trial statute or rule. A compilation and analysis of those statutes and rules can be found in Burke O'Hara Fort *et al.*, *Speedy Trial: A Selective Bibliography and Comparative Analysis of State Speedy Trial Provisions* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978).

3. American Bar Association Standards for Criminal Justice, Chapter 12, *Speedy Trial* (Chicago: American Bar Association, August 1980).

in criminal caseloads;⁴ numerous court decisions interpreting speedy trial statutes and rules; the ABA's adoption of *Standards Relating to Trial Courts*, which focus in part on reducing delays in the processing of all types of cases;⁵ the adoption by at least 38 states and a number of local jurisdictions of case processing time standards (generally building on the ABA's case processing time standards);⁶ considerable experimentation with approaches to achieving more timely resolution of criminal cases using approaches adapted from those standards and related materials;⁷ and a substantial amount of research aimed at developing knowledge

4. According to data compiled by the National Center for State Courts, there was a 31 percent increase in felony case filings between 1994 and 2003. Richard Y. Schauffler *et al.*, eds., *Examining the Work of State Courts, 2004* (Williamsburg: National Center for State Courts, 2005), p. 45.

5. American Bar Association, *Standards Relating to Trial Courts* (Chicago: American Bar Association, 1976, as amended in 1984 to incorporate Standards Relating to Court Delay Reduction developed by the National Conference of State Trial Judges). The original ABA *Standards Relating to Trial Courts*, initially adopted in 1976, had included standards focused on caseload management by the trial court and specifically called for adoption of case processing time standards. The 1984 amendments strengthened the commitment to caseload management and included more detailed guidance on essential elements of a court delay reduction program. For the current version, see American Bar Association Standards of Judicial Administration, Vol. II, *Standards Relating to Trial Courts*, 1992 Edition.

6. For detailed information about case processing time standards adopted by state court systems, see the online report compiled for the National Center for State Courts by Heather Dodge and Kenneth Pankey, entitled *Case Processing Time Standards in State Courts, 2002-03* (viewed at http://www.ncsconline.org/WC/Publications/KIS_CasManCPTSPub.pdf).

7. For descriptions of efforts by individual jurisdictions to improve the timeliness of criminal case resolution, see, e.g., Larry L. Sipes *et al.*, *Managing to Reduce Delay* (Williamsburg: National Center for State Courts, 1980); David W. Neubauer *et al.*, *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay Reduction Programs* (Washington, D.C.: National Institute of Justice, 1981); William E. Hewitt *et al.*, *Courts that Succeed* (Williamsburg: National Center for State Courts, 1990); Suzanne Alliegro *et al.*, "Beyond Delay Reduction: Using Differentiated Case Management", *The Court Manager*, Vol. 8, Nos. 1, 2, and 3 (three-part series, 1993); Barry Mahoney and Holly C. Bakke, *Criminal Caseload Management Improvement in Essex County (Newark, NJ), 1990-1994* (Denver: The Justice Management Institute, 1995); John Goerdt, "Slaying the Dragon of Delay: Findings from A National Survey of Recent Court Programs", *The Court Manager*, Vol. 12, No. 3 (Summer 1997), pp. 30-37.

about effective ways of managing caseloads so as to provide timely resolution of cases without compromising the quality of justice.⁸

The Third Edition Standards build on the foundation of research and practical experience developed since initial adoption of the *Speedy Trial* Standards, and are intended to be used as a guide to criminal justice system improvement at all levels of government. They are the product of work by a Task Force of the Standards Committee, which began considering this topic in January 2001, and subsequent work by the Standards Committee. Drafts of the Standards were circulated widely, and revisions were made in light of comments received from groups that reviewed the drafts. The Standards were approved by the Criminal Justice Section Council in April 2004 and by the House of Delegates in August 2004.

The newly adopted Third Edition *Standards on Speedy Trial and Timely Resolution of Criminal Cases*, as they are now termed, represent a substantial revision of the Second Edition Standards, in substance, scope, and organization. The principal conceptual change from the 1978 Standards is reflected in the title change. The addition of “*Timely Resolution of Criminal Cases*” reflects the view that speedy trial standards address only some of the justice concerns related to timely disposition of cases. Timely resolution is essential in all criminal matters, not just in those cases going to trial. Indeed, the great majority of cases are resolved through non-trial means. Additionally, while defendants have a strong interest in a meaningful right to a speedy trial, there are powerful reasons, apart from the defendant’s interests, to minimize unnecessary delay in the resolution of criminal cases.

8. See, e.g., Steven Flanders *et al.*, *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977); Thomas W. Church *et al.*, *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg: National Center for State Courts, 1978); Ernest C. Friesen *et al.*, “Justice in Felony Courts: Report on a Study of Delay in Metropolitan Courts During 1978-79”, *Whittier Law Review*, Vol. 2 (1979), pp. 7-60; Barry Mahoney *et al.*, *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg: National Center for State Courts, 1988); John Goerdt *et al.*, *Examining Court Delay* (National Center for State Courts, 1989); David C. Steelman *et al.*, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), esp. pp. 45-56, 175-187.

The two earlier editions of the *Speedy Trial* Standards focused almost exclusively on the defendant's right to a speedy trial.⁹ These Third Edition Standards reflect the view that, in addition to ensuring that defendants have a meaningful and enforceable right to a speedy trial, substantial attention should be given to the interests of the public (including victims and witnesses) in timely case resolution. The new Standards incorporate a number of significant changes relating to a defendant's right to a speedy trial and also extend the scope of the Standards to include the broader interests in timely resolution of all criminal cases. The broadened scope necessitated a reorganization of the Standards, which now consist of four principal parts.

The Standards begin with a new Part I that presents the purposes and general principles of these Standards. Part I opens with a Standard articulating (and making explicit) three purposes for the Standards: to effectuate the right of the accused to a speedy trial; to further the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases; and to ensure the effective utilization of resources (Standard 12-1.1). As a matter of principle, Standard 12-1.2 emphasizes the importance of both the right of an accused to a speedy trial and the interest of the public, including victims and witnesses, in timely resolution of criminal cases. It provides for both (a) a statute or rule to protect the accused's right to a speedy trial; and (b) adoption by jurisdictions of policies and standards that establish goals for timely resolution of cases, require monitoring of performance in relation to the goals, and provide for dissemination of data concerning organizational performance in light of the goals.

Included in the Part I principles are several additional guiding tenets: (a) that the Standards should be read in conjunction with other ABA Standards on Criminal Justice, and with recognition that fairness and accuracy are essential components of the criminal justice process; (b) that the Standards are not intended to emphasize the speedy disposition of cases to the detriment of the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal

9. The opening sentence of the commentary to Standard 1.1 in both the original Standards and the Second Edition noted that the principles underlying most of the Standards "deal primarily with protection of the defendant, who otherwise would not be in a position to force a prompt trial." The commentary to Standard 1.1 in both the First and Second Editions states that "the interest of the public in the prompt disposition of criminal cases, however, must also be recognized," but those editions of the black letter Speedy Trial Standards do very little to directly address this interest.

cases; (c) that speedy trial time limits and other case processing mechanisms should take account of the relative seriousness and complexity of different types of cases, and also of the custody status of defendants; (d) that the issues of speedy trial and timely case resolution should be approached from a systemic perspective; and (e) that jurisdictions should provide adequate resources to the institutions and agencies involved in criminal justice processes, in order to enable the purposes of the Standards to be achieved. Subsequent Standards in Parts II, III, and IV provide guidance for implementing the general principles.

Part II, entitled “Defendant’s Right to a Speedy Trial,” revises, updates, and reorganizes all of the Second Edition *Speedy Trial* Standards while following a conceptual approach to protecting the defendant’s right to a speedy trial that is consistent with the approach taken in the First and Second Editions. Thus, Standard 12-2.1 of these Standards calls for jurisdictions to establish a statute or rule that establishes outside limits on the amount of time that can elapse from the inception of a criminal case until the commencement of a trial or other resolution of the case. Other Standards in Part II implement this approach and include provisions concerning the computation of allowable time under the speedy trial rule or statute. As in previous editions of the *Speedy Trial* Standards, the ultimate consequence for failure to commence trial within the allowable time period is dismissal of the charge(s) with prejudice (Standard 12-2.7(b)). However, provisions are included to prevent injustices. The speedy trial right provided for under a rule or statute established under these Standards would be more stringent in its time frames and more predictable in its operation than the constitutional right to a speedy trial articulated in U.S. Supreme Court cases.¹⁰

10. The Supreme Court first applied the Sixth Amendment right of speedy trial to the states in *Klopfert v. North Carolina*, 386 U.S. 213 (1967). The leading case providing guidelines for determining violations of the constitutional right to a speedy trial is *Barker v. Wingo*, 407 U.S. 514 (1972), which provides for a balancing test that takes account of four factors; (1) the length of the delay; (2) reasons assigned for the delay by the prosecutor; (3) whether the defendant asserted the right; and (4) prejudice to the defendant. By contrast the proposed Standards—like the First and Second Edition Standards—provide for the speedy trial time limit period to begin running without demand by the defendant; do not require a showing of prejudice to the defendant; and provide for time periods that, though they may be extended for good cause, are appreciably shorter than the periods involved in the Supreme Court cases. The opinion of the Court in *Barker v. Wingo* noted that, although a rigid length of time was not required to

Part III of the Third Edition Standards, entitled “Standards for Timely Resolution of Criminal Cases,” is entirely new, and focuses on the interests of the public (including victims and witnesses) in timely resolution of criminal cases. Standard 12-3.1 sets forth reasons why jurisdictions should adopt policies and standards aimed at timely case resolution. Standard 12-3.2 addresses the need for collaborative development of goals for timely resolution and specifies the stages of criminal case processing that should be the subject of goals. As noted explicitly in Standard 12-3.2(d), the goals are intended to provide guidance for practitioners and others concerning the scheduling of criminal cases and the management of criminal caseloads and would not create any rights for defendants or others. The emphasis in this Standard on collaborative development of goals and policies reflects the view that goals and policies are most likely to be meaningful and workable if leaders of the institutions that will be directly affected by them—including prosecutors, the defense bar, law enforcement agencies, other criminal justice agencies, and general government—are involved in their development.

Part IV of the Standards, also new, focuses on organization of justice system resources to achieve timely resolution of criminal cases. This Part of the Standards calls for system-wide policies and practices (Standard 12-4.1); development of caseflow management practices and procedures that take account of the operations of all of the entities involved in criminal case processing (Standard 12-4.2); jurisdictional plans for effective criminal caseflow management (Standard 12-4.3); and effective use of modern information technology (Standard 12-4.4). Standard 12-4.5 emphasizes that, as a matter of effective system operations, it is important for the court to have control over the trial calendar and all other calendars on which a case may be placed. Consistent with earlier editions of the *Speedy Trial* Standards, it provides for continuances to be granted only by a judicial officer, only upon a showing of good cause, and only for as long as necessary. Additionally (and consistent with the *ABA Standards Relating to Trial Courts*), it calls upon courts to establish mechanisms and procedures to promote the resolution of cases within the time periods established by applicable management goals.

The overall thrust of these Standards is toward strengthened protection of a defendant’s right to a speedy trial coupled with enhanced

trigger the speedy trial right, states were free to “prescribe a reasonable period consistent with constitutional standards” (*Id.* at 523).

recognition of the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases. The Standards recognize that it is important to enable both prosecution and defense to have adequate time to do what is necessary to meet their responsibilities. There should never be a rush to judgment. On the contrary, Standard 1.1 provides explicitly that in implementing these Standards in individual cases and in developing policies for overall management of caseloads, jurisdictions “should seek to ensure that both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses, review documents, make appropriate motions, and conduct other essential aspects of case preparation.” Thus, the Standards recognize that, as one scholar observed four decades ago, “Slow justice is bad, but speedy injustice is not an admissible substitute.”¹¹ The Standards provide practical guidance for jurisdictions to follow in developing criminal justice processes that are fair, accurate, timely, efficient, and effective.

11. Maurice Rosenberg, “Court Congestion: Status, Causes, and Remedies,” in Harry W. Jones, *The Courts, the Public and the Law Explosion* (Englewood Cliffs, N.J.: Prentice Hall, Inc, 1965), p. 56.

PART I

GENERAL PRINCIPLES

Standard 12-1.1 Purposes of the Standards on Speedy Trial and Timely Resolution of Criminal Cases

(a) The Standards on *Speedy Trial and Timely Resolution of Criminal Cases* have three main purposes: (1) to effectuate the right of the accused to a speedy trial; (2) to further the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases; and (3) to ensure the effective utilization of resources.

(b) These standards should be read in conjunction with other ABA Standards for Criminal Justice, and with recognition that fairness and accuracy are essential components of the criminal justice process. The standards are not intended to emphasize speedy disposition of cases to the detriment of the interests of the parties and the public, including victims and witnesses, in the fair, accurate and timely resolution of cases. In implementing these standards in individual cases and in developing policies for overall management of caseloads, jurisdictions should seek to ensure that both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses, review documents, make appropriate motions, and conduct other essential aspects of case preparation.

History of Standard

This Standard is new but the concepts are not. The introductions to the First and Second Editions of the *Speedy Trial* Standards noted that those Standards were intended to define and protect the interests of both the defendant and the public in prompt trials, though the Standards themselves dealt almost exclusively with protection of the defendant. This Standard puts the interests of the public and the desirability of ensuring the effective utilization of resources into black letter.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.31, 2.50–2.55

ABA Model Code of Judicial Conduct (2004 ed.), Canon 3B(8) and 3C(3)

ABA Standards for Criminal Justice, Prosecution Function (3d ed., 1993), Standard 3-2.9; Defense Function (3d ed., 1993), Standard 4-1.3 and 4-3.6; Special Functions of the Trial Judge (3d ed., 2000), Standard 6-1.5; Discovery (3d ed., 1996), Standard 11-4.1

Commentary

Unnecessary delay in the processing of criminal cases undermines defendants' rights to a speedy trial, prolongs periods of tension and anxiety for victims and witnesses, adversely affects public confidence in the justice system, and often causes unnecessary expense to taxpayers. Reflecting these concerns, this Standard articulates three main purposes of the Standards on *Speedy Trial and Timely Resolution of Criminal Cases*: effectuating a defendant's right to a speedy trial; furthering the public interest (including the interests of victims and witnesses) in fair, accurate, and timely resolution of criminal cases; and enabling effective use of public resources. It emphasizes that fairness and accuracy are essential elements of a viable criminal justice system and cautions that in implementing the Standards jurisdictions should ensure that both prosecution and defense have adequate time for investigation and case preparation.

Standard 1.1(a)

Previous editions of the *Speedy Trial* Standards had placed almost exclusive emphasis, in the black letter standards, on effectuating a defendant's right to a speedy trial. Protecting this right remains a primary purpose of these Standards, and is the sole focus of Part II of the Standards. Protection of the right to a speedy trial is especially important for defendants who are detained prior to trial, since protracted delays mean *de facto* indeterminate imprisonment without a determination of guilt. Defendants released pending trial also have an interest in an opportunity for a prompt trial.

Experience has shown, however, that solely emphasizing a defendant's right to a speedy trial does not address the backlog and delay that plague many court systems, and which contribute to diminished respect for the justice system and wasteful use of scarce public resources.

In reality, many defendants, particularly if not in detention prior to trial, are content to let time pass—and with the passage of time, witnesses may become exhausted or unavailable, evidence can be lost, memories of events are likely to fade, and the capacity of the justice system to provide fair, accurate, and effective justice erodes. Reliance on speedy trial laws alone is not sufficient to protect the interests of the public (including victims and witnesses) in reasonably prompt resolution of cases. This Standard therefore highlights two additional purposes of the revised Standards, each of which is addressed in subsequent Parts of the Standards: furthering the broader public interests in fair, accurate, and timely case resolution (Part III) and ensuring effective use of resources (Part IV). All three purposes should be part of the calculus in managing caseloads and setting schedules in individual cases.

Standard 1.1(b)

While speedy trials and timely resolution of cases are important values in a criminal justice system, they are by no means the only values. Standard 1.1(b) highlights the importance of placing these Standards in a context that emphasizes the importance of fairness and accuracy in the criminal justice process.¹² Achieving fair and accurate results requires that both prosecution and defense be able to learn about their cases, interview witnesses, and conduct other aspects of case preparation. In some circumstances—especially in complex high-stakes cases—lawyers may need to review voluminous documents, obtain the results of forensic tests, and participate in extensive pretrial motion practice. Even in cases

12. There is growing evidence that, despite the protections built into criminal procedure in every jurisdiction, there are cases in which persons are convicted of crimes of which they are factually innocent, in part because of flawed pretrial processes. See, e.g., Paul Giannelli and Myrna Raeder (eds.), *Achieving Justice: Freeing the Innocent, Convicting the Guilty* (Washington, D.C.: American Bar Association Criminal Justice Section, 2006), a volume that documents the extent of the problem and contains chapters discussing specific causes of wrongful convictions. The book includes policies, adopted by the ABA House of Delegates, that are designed to ensure that individuals will not be convicted of crimes that they did not commit, and to compensate those who are exonerated. See also Andrew D. Leipold, “How the Pretrial Process Contributes to Wrongful Convictions”, 42 *American Criminal Law Review* 1123 (Fall 2005); Samuel L. Gross et al., “Exonerations in the United States: 1989 through 2003,” 95 *Journal of Crim. Law & Criminology* 523 (2005); Barry Scheck et al., *Actual Innocence* (New York: Doubleday, 2000). These Standards are intended to increase the likelihood of fair processes and accurate results, as well as timely resolution of the cases.

involving relatively minor charges and few witnesses, time may be required to obtain relevant information including assessments of a defendant's mental health or the nature and extent of a defendant's substance abuse problem. The time required for case preparation will, of course, vary with the complexity and particular circumstances of the case. The Standards encourage increased attention to effective management of caseloads and to effective scheduling of court events in individual cases, while providing safeguards that will enable counsel and the court to devote adequate time to each case.

Standard 12-1.2 Importance of establishing both speedy trial rules and standards for timely resolution of criminal cases

(a) The right of an accused to a speedy trial is fundamental. It should be effectuated and protected by rule or statute that:

(i) sets specific limits on the time within which either the defendant must be brought to trial or the case must be resolved through a non-trial disposition;

(ii) provides guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and

(iii) establishes appropriate consequences in the event that the accused's right to a speedy trial is denied.

(b) The public, including victims and witnesses, has an interest in the timely resolution of criminal cases. From the commencement of a criminal case to its conclusion, any elapsed time other than reasonably needed for preparation and court events should be minimized. The public's interest should be expressed in formally adopted policies and standards that:

(i) establish goals for the timely resolution of criminal cases from commencement to disposition and for specific stages, taking into account the seriousness and complexity of different types of cases;

(ii) require monitoring of the performance of the courts and other organizational entities with respect to the goals; and

(iii) provide for public dissemination of data concerning organizational performance in relation to the goals.

History of the Standard

This Standard is new. It incorporates language from First and Second Edition Standard 12-2.1 in calling for protection of an accused's right to a speedy trial to be effectuated by a statute or rule.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.50-2.55

NDA National Prosecution Standards (2d ed., 1991), Standard 63.1

NAC on Criminal Justice Standards and Goals, Courts (1973), Standard 4.1

Commentary

This Standard lays the groundwork for the two-fold thrust of these Standards: protection of a defendant's right to a speedy trial coupled with furtherance of public interests in timely case resolution. Standard 12-1.2(a) lays out the basics of the approach that is developed in much greater detail in Part II: adoption of a speedy trial statute or rule that sets time limits for bringing a defendant to trial or otherwise resolving the case, with guidelines covering computation of the allowable time and appropriate consequences for non-compliance with the time limits. In noting that the right to a speedy trial is "fundamental," this Standard reflects the fact that the right is explicitly set forth in the Sixth Amendment to the U.S. Constitution and has been held applicable to the states by the U.S. Supreme Court.¹³ All states, as well as the federal courts, now have some form of a speedy trial statute or rule, but the specifics vary widely from jurisdiction to jurisdiction. The approach to designing and implementing a speedy trial statute or rule that is taken in Part II of these Standards builds on the experience acquired under differing legal frameworks, aiming for a workable system that will make the right to a speedy trial meaningful while minimizing confusion and gamesmanship in its application.

Standard 12-1.2(b) introduces as a black letter standard an important public policy corollary to these Standards' protection of the defendant's right to a speedy trial: furtherance of the interests of the public, including victims and witnesses, in timely resolution of criminal cases. During the

13. *Klopper v. North Carolina*, 386 U.S. 213 (1967); *Barker v. Wingo*, 407 U.S. 514 (1972).

years since the *Speedy Trial* Standards were first adopted, there has been growing recognition of these interests, especially the interests of crime victims.¹⁴ The American Bar Association has repeatedly acknowledged these interests, perhaps most notably in the *Standards Relating to Trial Courts*,¹⁵ but these Standards take a significant step forward in providing practical guidance for jurisdictions interested in advancing the public interest in timely case resolution. Standard 1.2(b) sets forth the heart of the recommended approach: establishment of formal policies and standards that establish goals for timely case resolution, require monitoring of the performance of courts and other justice system entities in relation to the goals that are set, and provide for public dissemination of data on the performance of these entities. The approach is developed in detail in Parts III and IV of these Standards.

Standard 12-1.3 Case differentiation

In establishing statutes or rules for speedy trial and goals and practices for timely resolution of criminal cases, jurisdictions should:

(a) take account of the relative seriousness and complexity of different types of cases; and

(b) distinguish between defendants in detention and defendants on pretrial release. The time limits concerning speedy trial for detained defendants should ordinarily be shorter than the limits applicable to defendants on pretrial release.

History of the Standard

This Standard is new.

14. Many states now explicitly recognize, in constitutional or statutory provisions, victims' interests in timely disposition of the cases in which they are involved. See, e.g., Arizona Const. Article 2, Section 2.1(10); Michigan Const. Article I, Section 24; Wisconsin Const. Art I, Section 9m; South Carolina Const. Article I, Section 24(11).

15. See *ABA Standards Relating to Trial Courts* (1992 ed.), Standards 2.50–2.55; also *ABA Standards for Criminal Justice, Prosecution Function* (3d ed., 1993), Standard 3-2.9, *Defense Function* (3d ed., 1993), Standard 4-1.3; *Special Functions of the Trial Judge* (3d ed., 2000), Standard 6-1.5; and *Discovery* (3d ed., 1996), Standard 11-1.1; and American Bar Association, *Suggested Guidelines for Reducing the Adverse Effect of Case Continuances and Delays on Crime Victims and Witnesses* (1986).

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.51(d) and 2.52(e)

ABA Standards for Criminal Justice, Pretrial Release (3d ed., 200_), Standard 10-5.11

Commentary

This Standard calls for differentiating cases according to two important criteria: their relative complexity and the custody status of the defendant. Standard 12-1.3(a) takes a common-sense approach, recognizing that wide variations exist in case complexity. This approach—which has been employed successfully in a number of American jurisdictions¹⁶—is incorporated in the provisions in Part II concerning design and implementation of speedy trial laws and in the provisions of Part III that deal with standards and policies for timely resolution of cases.

Standard 12-1.3(b) distinguishes between cases involving defendants in pretrial detention and defendants on some form of pretrial release. Most speedy trial laws and rules make such a distinction, providing for tighter time limits for detained defendants. Similarly, the ABA Standards on *Pretrial Release* provide that a speedy trial statute or rule should have time limitations that are shorter than the limitations applicable to defendants on pretrial release.¹⁷

Standard 12-1.4 Systems approach

(a) These standards approach the issues of speedy trial and timely case resolution from a systemic perspective, recognizing that many different institutions, agencies, and individuals play key roles

16. See, e.g., Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," *Judicature*, Vol. 73, No. 1 (1989) pp. 17 ff; Suzanne Alliegro *et al.*, "Beyond Delay Reduction: Using Differentiated Case Management," *The Court Manager*, Vol. 8, Nos. 1, 2, and 3 (Winter, Spring, and Summer 1993); David C. Steelman *et al.*, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), pp. 5-8, 49, 51-52.

17. ABA Standards for Criminal Justice, *Pretrial Release* (3d ed., 200_), Standard 10-5.11.

in criminal cases. In order for the purposes of the standards to be achieved, the interests and perspectives of the following should be taken into account:

(i) defendants;

(ii) the public, including victims and witnesses;

(iii) courts;

(iv) prosecutors and defense counsel; and

(v) law enforcement agencies, officials responsible for local detention facilities, pretrial services agencies, probation departments, and other organizations involved in or affected by the prosecution and adjudication of criminal cases.

(b) Jurisdictions should provide adequate resources to the institutions and agencies involved in criminal justice processes, in order to enable the purposes of these standards to be achieved.

History of the Standard

This Standard is new. It develops and puts into black letter a point made in the Introduction to the Second Edition *Speedy Trial Standards*: experience has shown that “a system of speedy, effective justice requires a comprehensive, system-wide effort.”¹⁸

Related Standards

NDA National Prosecution Standards (2d ed., 1991), Standard 65.2

Commentary

In emphasizing that these Standards take a systemic approach to issues of speedy trial and timely case resolution, Standard 12-1.4(a) draws upon experience gained in numerous efforts to implement speedy trial laws and delay reduction programs in states and local jurisdictions over more than a quarter of a century. In implementing speedy trial laws in individual cases, the principal actors are generally the prosecution, the defense (defendant and counsel), and the court, but many other individuals and entities—including forensic laboratories, law enforcement agencies, and individual witnesses—can greatly affect the

18. ABA *Standards for Criminal Justice, Speedy Trial* (2d ed., 1978, 1986), Introduction, p. 4.

ability of the court and the parties to meet time limits set by statute or rule. In addressing broader problems of case backlogs and delays, the systemic implications are more obvious: inefficiencies or non-cooperation on the part of any of the many organizational entities and individual actors involved in the process can create bottlenecks, cause congestion, and make it difficult to provide prompt justice even in relatively simple cases.

When jurisdictions have been successful in reducing backlogs and delays, it has generally been through collaborative approaches that have taken account of a broad range of relevant perspectives. The programs have often been led by a chief judge but have generally involved a broad range of stakeholders.¹⁹ This Standard provides for the stakeholder group to include not only criminal justice practitioners but also members of the public. The concerns of victims and witnesses are especially salient, and ways should be found to ensure that their interests and perspectives are taken into account in addressing systemic problems that impede timely resolution of cases.

Effective justice systems require resources, and far too many jurisdictions have failed to provide the resources needed for criminal justice processes to function effectively.²⁰ Standard 12-1.4(b) addresses the need for adequate funding of the institutions involved in criminal justice, in order to enable speedy trials and timely resolution of criminal cases.

Standard 12-1.5 Caseflow systems that will enable timely resolution of all criminal cases

These standards focus on the timely resolution of all criminal cases, including the large proportion of cases not resolved by trial. In order to utilize limited resources effectively, jurisdictions should design caseflow systems that enable an early assessment of the complexity and prospects for non-trial resolution of cases, and seek

19. See, e.g., David C. Steelman *et al.*, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), pp. 45-52. See also Robert C. Cushman, *Guidelines for Developing a Criminal Justice Coordinating Committee* (Washington, D.C.: National Institute of Justice, 2002), esp. pp 4-7, 23-27.

20. See, e.g., ABA Criminal Justice Section Special Committee on Criminal Justice in a Free Society, *Criminal Justice in Crisis* (November 1988).

to facilitate the early resolution of cases not likely to be tried. Such caseload systems should ensure that many cases are resolved rapidly, that trial continuances are minimized, that case scheduling functions with a high degree of certainty and predictability, and that the jurisdiction's speedy trial requirements and standards for timely resolution can be met.

History of the Standard

This Standard is new.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.50 – 2.55

Commentary

Most criminal cases—well over 90 percent in most jurisdictions—are resolved without a trial.²¹ The opening sentence of this Standard (like the revised title of these Standards) recognizes this reality, and seeks to broaden the focus of the Standards to include attention to all cases, including those that can be resolved without a trial. The way that a jurisdiction's courts and justice system organize themselves to deal with the totality of the caseload will have a great bearing on the ability of the jurisdiction to meet speedy trial requirements and to ensure timely resolution of all cases.

The term “caseload management” came into usage in the justice system with the publication in 1973 of a landmark ABA monograph entitled *Caseload Management in the Trial Court*,²² followed shortly thereafter by publication of the First Edition of the ABA's *Standards Relating to Trial Courts*. The *Standards Relating to Trial Courts* called

21. According to a 2001 study of case processing time in 17 urban trial courts conducted by researchers at the National Center for State Courts, an average of only about 4 percent of felony case dispositions were by jury verdict. Another 1 percent were resolved by bench trial. See Brian J. Ostrom, Robert LaFountain, and Neal Kauder, “Felony Workload and Manner of Disposition” in *Caseload Highlights*, Vol. 7, No. 1 (Williamsburg: National Center for State Courts, August 2001).

22. Maureen Solomon, *Caseload Management in the Trial Court* (Chicago: American Bar Association Commission on Standards of Judicial Administration, 1973).

for jurisdictions to develop caseload management programs that included case processing time standards, capacity for monitoring the status and progress of all cases, and central supervision by a presiding judge.²³ During the years that followed, there has been a great deal of research on different approaches to managing the flow of criminal cases through local criminal justice systems, from arrest to disposition of cases, and much has been learned. It is now clear that delays are not inevitable; that when serious backlogs and delays exist, they can be eliminated or greatly reduced; and that systems can be implemented to enable appropriately timely resolution of all or virtually all cases.²⁴ The key elements of effective systems, as gleaned from this research and experimentation, are incorporated in provisions of Parts III and IV of these Standards.

23. American Bar Association Commission on Standards of Judicial Administration, *Standards Relating to Trial Courts* (Chicago: American Bar Association, 1975), Standards 2.50 – 2.55, esp. Standard 2.52. Standards 2.50-2.55 were amended in 1984, adding substantially greater detail on elements of effective caseload management and delay reduction strategies. The amended standards are included in the most recent (1992) edition of the ABA *Standards Relating to Trial Courts*.

24. See, e.g., Ernest C. Friesen *et al.*, “Justice in Felony Courts: A Prescription to Control Delay – Report on a Study of Delay in Metropolitan Courts During 1978-79” *Whittier Law Review*, Vol. 2, No. 1 (1979); Larry L. Sipes *et al.*, *Managing to Reduce Delay* (Williamsburg: National Center for State Courts, 1980); David W. Neubauer *et al.*, *Managing the Pace of Justice: An Evaluation of LEAA’s Delay Reduction Program* (Washington, D.C.: National Institute of Justice, 1981); ABA Action Commission to Reduce Court Costs and Delay, *Attacking Litigation Costs and Delay* (Chicago: American Bar Association, 1984), esp. pp 1-5; Maureen Solomon and Douglas K. Somerlot, *Caseload Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987); Barry Mahoney *et al.*, *Changing Times in Trial Courts* (Williamsburg: National Center for State Courts, 1988); William E. Hewitt *et al.*, *Courts That Succeed* (Williamsburg: National Center for State Courts, 1990); John Goerd, “Slaying the Dragon of Delay: Findings from a National Survey of Recent Court Programs,” *The Court Manager*, Vol. 12, No. 3 (Summer 1997); David C. Steelman *et al.*, *Caseload Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), esp. pp. 87-103.

PART II

DEFENDANT'S RIGHT TO A SPEEDY TRIAL

Standard 12-2.1 Speedy trial time limits

(a) A defendant's right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement of the trial or other disposition of the case. The time limits should be expressed in days or months.

(b) The presumptive speedy trial time limit for persons held in pretrial detention should be [90] days from the date of the defendant's first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pretrial release should be [180] days from the date of the defendant's first appearance in court after either the filing of any charging instrument or the issuance of a citation or summons. Shorter presumptive speedy trial time limits should be set for persons charged with minor offenses.

(c) Certain periods of time should be excluded from the computation of time allowed under the rule or statute, as set forth below in Standard 12-2.3.

(d) Provision should be made for the court to determine, on motion of the prosecution or the defense or on its own motion, that a case is of such complexity that the presumptive speedy trial time limit should be extended in order to enable the parties to make adequate preparations for pretrial proceedings or for the trial itself. The court should give substantial weight to a motion for extension of the speedy trial limit on these grounds that is made, with good cause shown, by either the prosecution or the defense. In the event that a determination of complexity is made, the judge should establish a revised time limit and should state on the record the reasons for extending the time. A motion to extend the speedy trial time limit because of the complexity of the case should be made as soon as practicable.

History of the Standard

This Standard is a revised and substantially expanded version of Second Edition Speedy Trial Standard 12-2.1. Sections (b) and (d) are entirely new.

Related Standards

ABA Standards for Criminal Justice, Pretrial Release (3d ed., 200_), Standard 10-5.11

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722(a), (d), (f)

NDAA National Prosecution Standards (2d ed., 1991), Standards 63.2– 63.4

NAC Criminal Justice Standards and Goals, Courts (1973), Standard 4.1

Commentary

In *Barker v. Wingo*, the United States Supreme Court took a balancing approach to determining whether a defendant's constitutional right to a speedy trial had been violated, holding that an approach to speedy trial based on a rigid length of time is not constitutionally required. However, the Court made it clear that states are free to "prescribe a reasonable period consistent with constitutional standards."²⁵ All states, as well as the federal government, now have some form of speedy trial statute or rule that provides a specific length of time within which a trial must be commenced, though the length of the allowed time varies widely. This Standard sets forth the basic framework for a speedy trial statute or rule that is independent of defendants' Sixth Amendment right to a speedy trial and that provides clear delineation of the time periods within which a defendant must be brought to trial or the case otherwise resolved.

Standard 12-2.1(a) begins, as did comparable provisions in the First and Second Edition *Speedy Trial* Standards, with a declaration that jurisdictions should have a rule or statute that recognizes and protects defendants' right to a speedy trial. The earlier editions provided that the rule or statute should have time limits that are expressed in days or months but did not suggest any specific time period. These Third Edition Standards depart from the approach taken in previous editions by

25. *Barker v. Wingo*, 407 U.S. 514 at 523 (1972).

recommending, in Standard 12-2.1(b), presumptive speedy trial time limits framed in terms of a specific number of days. The recommended lengths of the presumptive time limit periods are 90 days for persons in detention and 180 days for persons on pretrial release. Standard 12-2.1(b) also provides, in the last sentence of the Standard, that shorter presumptive time limits should be set for cases involving minor offenses. The lengths of the presumptive time limit periods are shown in brackets in the black letter Standards to reflect the understanding that circumstances differ widely in different jurisdictions, and that the precise length of the speedy trial time period should be left to individual jurisdictions.

The decision to recommend specific presumptive time limits was taken for several reasons. First, it seems desirable to provide guidance to jurisdictions that may consider modifying their existing speedy trial rules or statutes. Second, a number of other bodies that have considered the issue—including the President’s Commission on Law Enforcement and Criminal Justice, the National Advisory Commission on Criminal Justice Standards and Goals, the National Conference of Commissioners on Uniform State Laws, and the National District Attorneys Association—have recommended specific time periods for the conclusion of criminal cases,²⁶ and it seemed that ABA guidance on this subject could be helpful. Third, the experience of some jurisdictions in working successfully with relatively short speedy trial time limits suggests that the presumptive time limits set forth in Standard 12-2.1(b) are realistic and workable. The time periods suggested in Standard 12-2.1(b) are

26. The President’s Commission recommended a maximum period of four months from arrest to trial in felony cases. See President’s Commission on Law Enforcement and Criminal Justice, *The Challenge of Crime in a Free Society* (Washington: D.C., Government Printing Office, 1967), pp. 154-156, 257-259; also the President’s Commission’s *Task Force Report: The Courts* (Washington, D.C., 1967), pp. 84-88. The National Advisory Commission did not recommend an outside limit but proposed an average period from arrest to trial of sixty days for felonies and thirty days for misdemeanors. National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, Standard 4.1 (1973). The Commissioners on Uniform State Laws provided in Uniform Rule 722(a) for a limit of four months from the filing of an information or indictment. NDAA’s *National Prosecution Standards* provide for a maximum period of three months in felony cases (Standard 63.2) and 45 days in misdemeanor cases (Standard 63.3). Both the Uniform Rule and the NDAA Standards also provide for excludable time, as have the previous editions of the ABA *Speedy Trial Standards* and as do these Third Edition Standards.

roughly similar to the speedy trial time limits in several state statutes or rules, including those in California and Washington.²⁷ They are somewhat longer than the speedy trial time period established by federal law.²⁸

By framing these as *presumptive* time limits, Standard 12-2.1(b) deliberately introduces flexibility into the time limits. The presumptive time limit would apply to a case unless the court—typically after consultation with the prosecution and the defense—establishes a different time limit period. Additional flexibility is provided by other provisions of the Standards.

As in previous editions, these Standards provide for exclusion of some periods of time in specific circumstances. Thus, Standard 12-2.1(c) provides explicitly that certain periods of time (set forth in Standard 12-2.3) should be excluded from the computation of allowable time. The Standards also give discretion to the trial court—acting in consultation with the prosecution and the defense—to set and modify time limits in light of the particular circumstances and needs of individual cases. For example, Standard 12-2.1(d) provides that either the prosecution or the defense can move for a declaration of complexity, or the court can determine on its own motion that a case is of such complexity that the presumptive time limits should be extended.²⁹

27. California Penal Code Section 1382 provides for a sixty day speedy trial time period in felony cases and thirty days in misdemeanor cases. Washington's speedy trial rules provide for a sixty day speedy trial period if the defendant is in detention and ninety days if not in detention (see WA Rule CrR 3.3 and Rule CrRLJ 3.3). Both states provide—as do all other jurisdictions—for extensions of the speedy trial time period in the event of a waiver by the defendant or for other specific reasons.

28. 18 USC Section 3161 (c). This statute provides for a 70-day speedy trial limit period, commencing on the filing (and making public) of the information or indictment charging the defendant with an offense.

29. The federal Speedy Trial Act authorizes the granting of continuances on grounds of complexity ((18 U.S.C. § 3161(h)(8)(A)(ii)), and a number of state statutes or court rules contain similar provisions. Federal courts interpreting the “ends of justice” provisions for extending the time allowed under the Speedy Trial Act have stressed that a trial judge’s discretion to grant a continuance on these grounds is narrow. See, e.g., *United States v. Barnes*, 251 F.3d 1st Cir. 2001, *cert. denied* 534 U.S. 967 (2001). Relevant factors include the number of defendants, number of counts in the indictment, amount of discoverable material involved, and severity of a potential sentence. For an example of a case where the trial judge’s grant of a continuance extending the speedy trial time period on grounds of complexity was upheld on appeal, see *United States v. Reavis*, 48 F.3d 763 (4th Cir. 1995), *cert. denied*, 515 U.S. 1151

Standard 12-2.1(d) also provides that the court should give substantial weight to a motion for extension of the speedy trial limit on grounds of complexity that is made, with good cause shown, by either the prosecution or the defense. Other circumstances in which the court may exercise discretion to modify the originally set speedy trial time limits are set forth in Standards 12-2.2, 12-2.3(a)(v) and (vi) and 12-2.3(b), discussed below.

Standard 12-2.2 Commencement and setting of speedy trial time limit

The speedy trial time limit should commence, without demand by the defendant, from the date of the defendant's first appearance in court after either a charge is filed or a citation or summons is issued, except that:

(a) If the charge is dismissed and thereafter the defendant is charged with the same offense or one arising out of the same criminal episode, or if a superseding charging instrument is filed by the prosecution in place of the original charge, then:

(i) the court should set a new speedy trial limit as set forth in Standard 12-2.1 or a shorter period. The new limit should commence at the defendant's first appearance before the court on the new charge; and

(ii) in setting the new limit, the court should consider:

(A) the degree to which the new charge is different from the original charge;

(B) in the case of a superseding charging instrument, the extent to which the superseding instrument alleges offenses or material facts that were known to the prosecution at the time the original charge was filed;

(C) the period of time that has elapsed between the defendant's appearance on the first charge and the defendant's appearance on the second charge;

(D) the reason for the dismissal or the filing of the superseding instrument; provided, however, that if the court finds that the charge was dismissed to avoid the effect of the

(1995), a multi-defendant drug trafficking case involving a 33-count indictment in which there was also the possibility of prosecution under a seldom-used federal death penalty statute.

speedy trial time limit, the new charge should ordinarily be dismissed with prejudice;

(E) any other factor which, in the interests of justice, affects the time in which the defendant should be tried on the new charge;

(b) If the defendant is to be tried again following a mistrial, then a new reasonable speedy trial time limit should be set. The new speedy trial time limit period generally should be shorter than that applicable to the original charge and should commence from the date of the mistrial.

(c) If the defendant is to be tried again following a successful appeal or collateral attack on the conviction, then the speedy trial time limit should be that set forth in Standard 12-2.1 and should commence running from the date the order occasioning the retrial becomes final.

History of the Standard

This Standard is an expanded and revised version of former Standard 12-2.2.

Related Standards

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722(d)

NDA National Prosecution Standards (2d ed., 1991), Standards 61.2 - 61.4

Commentary

The opening paragraph of this Standard sets forth the general principle that the speedy trial time limit set in accordance with Standard 12-2.1, *supra*, should start to run—without any demand for a speedy trial having to be made by the defendant—on the date of the defendant’s first court appearance in a criminal case, except in certain circumstances that are covered in the remainder of the Standard.

The drafters of these Standards considered whether, in cases where there has been an arrest, the speedy trial time period should begin to run on the date of arrest rather than the date of the defendant’s first court appearance. However, what constitutes an “arrest” for purposes of starting the clock for the speedy trial time period can often be subject to dispute, and arrest dates are not always found in court records. By contrast, the reference points used in these Standards—date of first

appearance, date of filing of charges, and date of issuance of a citation or summons—are all readily ascertainable from court records. The use of the date of first appearance, which in cases involving detention after an arrest should ordinarily be within a maximum of 48 hours after the accused person was taken into police custody, provides a “bright line” commencement date for computing speedy trial time limit periods.³⁰ It results in a speedy trial time period that would be no more than two days longer than if the period started at arrest. Under the ABA Standards on *Pretrial Release*, adopted in 2004, an arrested defendant should be brought before a judicial officer promptly—optimally within six hours and in any event within 24 hours.³¹ In calling for the speedy trial time limit to commence at the defendant’s first appearance in court after a charge is filed or a summons is issued, except in the special circumstances covered in paragraphs (a) through (c), this Standard provides for a timely, appropriate and workable starting point for calculating the speedy trial time period.

In providing for the time limit to commence running from the date of the defendant’s first appearance in court after either a charge is filed or a summons or complaint is issued, the goal is to focus attention on achieving a prompt resolution of the case from its very outset. The term “charging instrument” as used in this Standard is meant to include any written statement filed with a court which accuses a person of an offense and which is sufficient to support a prosecution. It may be an

30. Every state has some type of statutory provision concerning prompt presentment of defendants in detention, typically requiring that an arrested defendant be brought to a presentment or arraignment “without unnecessarily delay” or “forthwith.” At least eight states explicitly require presentment or arraignment within 24 hours. See the compilation of statutes and accompanying discussion in Wendy L. Brandes, “Post-Arrest Detention and the Fourth Amendment: Refining the Standard of *Gerstein v. Pugh*,” 22 *Columbia Journal of Law & Social Problems* 445, 474-485, esp. p. 478 note 230. In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the United States Supreme Court held that a probable cause determination must be made within 48 hours for any defendant held in detention. Many (though not all) jurisdictions combine the probable cause determination with the defendant’s first court appearance, typically called a “presentment” or “arraignment.” Justice Scalia’s dissenting opinion in *County of Riverside v. McLaughlin* argues for a 24-hour standard for presentment, citing Brandes’ compilation of state statutes and also noting federal court decisions supporting the 24 hour standard (500 U.S. 44 at 59, 68-70).

31. ABA *Standards for Criminal Justice, Pretrial Release* (3d ed., 200_), Standard 10-4.1.

indictment, information, complaint, affidavit, or other document charging the accused person with an offense and/or alleging probable cause to believe that the accused person committed the charged offense, depending on the law of the particular jurisdiction. A similar approach was taken in previous editions of the *Speedy Trial Standards*.³²

For most cases (especially in jurisdictions where the trial is ordinarily held in the same court in which charges are filed initially), having the speedy trial time limit period begin on the date of the defendant's first appearance in court after a charge is filed or a summons is issued provides an easily workable starting point for computing the time limits. However, there are some special circumstances that require different starting points, as set forth in paragraphs (a) through (c) of this Standard.

Standard 2.2(a) – Setting time limits after dismissal and re-filing of charges or after the filing of a superseding charging instrument

In some jurisdictions, it is common for serious criminal charges to be filed initially in a limited jurisdiction court and subsequently—typically after consideration of the case by a grand jury—new and somewhat different charges to be filed in the general jurisdiction court, even though the charges relate to the same criminal episode as the original charge. Even when the case remains in the same court from the beginning of the process until its conclusion, it is not unusual for the prosecution—as it acquires new information or re-analyzes existing information—to amend the basic charging instrument or file new charges. This Standard takes account of such practices, giving the trial judge authority to set a new speedy trial time limit as set forth in subsections (i) and (ii).

The practical effect of Standards 12-2.1 and 12-2.2(a), when read together, is to provide for a presumptive speedy trial time limit of 90 days from first appearance for defendants held in detention and 180 days for defendants on pretrial release, with jurisdictions encouraged to set shorter presumptive time limits for minor offense cases. The presumptive limit can be revised by the trial judge when charges are dismissed and re-filed or when a superseding charging instrument such as an indictment or amended information is filed. In these circumstances, the Standard provides for the new limits to commence when the defendant first appears in court on the new charge and to be set in light of the history and circumstances of the particular case.

32. See commentary to Standard 2.2(a) in the First and Second Editions of the *ABA Standards on Speedy Trial*.

The presumption of a relatively short time limit period commencing at the defendant's first appearance following the original filing of a charge or the issuance of a summons or citation is meant to be taken seriously: this is the period that would be applicable in the absence of unusual circumstances warranting a modification of it. The presumption of a short time limit period is reinforced by Standard 12-2.6(a), *infra*, which calls for jurisdictions to provide that an indictment, information, or other formal charging instrument should be filed within a presumptive period of [30] days after the defendant's first appearance in court.

Standard 12-2.2(a) is intended to prevent the prosecution from rendering the defendant's right to a speedy trial meaningless by dismissing the case and re-filing charges that relate to essentially the same conduct or by allowing a lengthy period of time to pass before filing a superseding charging instrument. Thus, subsection (ii), in setting forth the criteria that a judge should use in setting a new time limit in these circumstances, calls for the judge to consider factors that may lead to setting time limits that could be appreciably shorter than the original limits if the new charges were shown to be essentially the same as the original ones.

It should be noted that these Standards do not address the issue of lapse of time following the filing of a charging instrument when the defendant has not been arrested or summoned to appear before the court very promptly after the charging instrument is filed. Because there are a great many factors that could potentially affect the length of this period (many of them beyond the control of the prosecution or the court), it is impractical to frame a speedy trial time limit based on the date the charge was filed. Clearly, however, the passage of lengthy periods of time between the filing of a charge and the defendant's arrest or first court appearance can raise constitutional questions under the due process clause.³³

33. See, e.g., *Doggett v. United States*, 505 U.S. 647 (1992), where the Supreme Court held that a delay of eight and a half years between the indictment and the arrest of the defendant denied the defendant's Sixth Amendment right to a speedy trial. Justice Souter's opinion for the 5-4 majority noted that the lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. *Id.* at 651-652. Due process questions may also conceivably arise in situations where there is extensive prosecutorial delay between the commission of a crime (or the conclusion of active investigation of a crime) and either the filing of formal charges or the arrest of a defendant. See *United States v. Lovasco*, 431 U.S. 783 (1977); *United States v. Marion*, 404 U.S. 307, 324 (1971).

Standard 2.2(b) – Setting time limits after a mistrial

After a mistrial, both the prosecution and the defense generally should be able to retry the matter without a long period of additional preparation. Accordingly, this Standard provides that, in setting new speedy trial time limits after a mistrial, the court should ordinarily set limits shorter than those set at the outset of the case. The new limit should commence on the date of the mistrial. As in setting time limits in other circumstances, the court can consider special circumstances (for example, temporary unavailability of witnesses or other commitments of counsel) brought to its attention by the parties.

Standard 2.2(c) – Setting time limits after a successful appeal or collateral attack

When a conviction has been reversed on appeal or vacated by a successful collateral attack, both prosecution and defense are in a significantly different position than after a mistrial. The appellate court reversal or the decision on collateral attack may come many months or even years after the original conviction. If the prosecutor determines that the case should be re-tried, it may take substantial time to locate essential witnesses and undertake fresh preparation. These circumstances are akin to the situation at the inception of the case, and this Standard therefore provides for the new time limit to be set in the same fashion as if the case were newly filed, following the approach set forth in Standard 12-2.1.

Standard 12-2.3 Excluded periods

(a) The following periods should be excluded in computing allowable time under the speedy trial rule or statute:

(i) time that elapses during other proceedings in the case against the defendant, including but not limited to an examination and hearing on competency, a period during which the defendant is incompetent to stand trial, and any interlocutory appeals;

(ii) time that elapses during a period when the defendant is on trial or engaged in proceedings in a different case in the same or a different court and was therefore physically unavailable;

(iii) time that elapses as a result of a continuance of the trial date granted at the request or with the consent of the defendant or the defendant's counsel. A defendant who has waived the right to counsel and is proceeding pro se should not be deemed to have consented to a continuance unless the defendant has been

advised by the court of the right to a speedy trial and the effect of the defendant's consent;

(iv) time that elapses during any delay caused by the defendant's failure to appear for scheduled court proceedings;

(v) time when the defendant is joined for trial with a codefendant as to whom the speedy trial time limit has not run, if the court finds that, for reasons stated on the record, the interests of justice served by the joinder outweigh the defendant's right to have the trial held within the originally prescribed time limits; and

(vi) other reasonable periods of time when circumstances warrant exclusion of the time upon good cause shown or upon a determination by the court that the interests of justice served by excluding a period of time from the speedy trial time limit outweigh the defendant's right to have the trial held within the originally prescribed time limits. No period of delay resulting from a continuance granted by the court in accordance with this paragraph should be excludable unless the court sets forth, in the record of the case, its reasons for finding that the interests of justice served by the granting of the continuance outweigh the defendant's right to have the trial held within the originally prescribed time limits.

(b) Time required for the consideration and disposition of pretrial motions should not be automatically excluded in computing allowable time under the speedy trial rule or statute. Such time may be excluded by the court upon request or on its own motion pursuant to Standard 12-2.3(a)(vi).

(c) If the court sets a case for trial on a date that is outside the speedy trial time limit, and the defendant is on notice of the scheduled date, the defendant's failure to object to the trial date on speedy trial grounds should be deemed consent to an extension of the time allowed under the speedy trial rule or statute to the scheduled date. Time that elapses during such an extended period should be excluded in computing time under the speedy trial rule or statute.

History of the Standard

This Standard is a substantially revised version of former Standard 12-2.3.

Related Standards

ABA Standards for Criminal Justice, Joinder and Severance (2d ed., 1980), Standard 13-2.2

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722(f)

NDAA National Prosecution Standards (2d ed., 1991), Standard 63.6

Commentary

This Standard addresses the need to take account of special circumstances that should warrant exclusion of certain periods in computing the overall time within which a defendant should be brought to trial or the case resolved through a non-trial disposition. It should be noted that “congestion of the trial docket,” which was a ground for exclusion of time under former Standard 12-2.3(b) when the congestion was due to “exceptional circumstances” has been dropped from the Standard. Delay resulting from chronic congestion of the docket or from failure of the prosecutor to be prepared to go to trial within the allowable period should not be excused.³⁴ In cases where truly exceptional circumstances overtax court or prosecutorial resources (e.g., a sudden influx of a large volume of cases resulting from a large-scale civil disorder), the provision in new Standard 12-2.3(a)(vi) allowing for exclusion of time in unusual circumstances should provide sufficient flexibility. The other principal change from former Standard 12-2.3 is a significant revision in the treatment of time required for the hearing of pretrial motions. Exclusion of time for consideration of motions is covered under new Standard 12-2.3(b), which provides for exclusion of the time to be within the discretion of the trial court.

Standard 12-2.3(a)

This Standard builds upon former Standard 12-2.3, but with significant revisions. There are specific rationales for each of the exclusions provided under Standard 12-2.2 (a).

Standard 12-2.3(a)(i) provides for exclusion of time that elapses during certain other proceedings in the case against the defendant, including an examination and hearing on the defendant’s competency, a period during which the defendant has been determined to be incompetent to stand trial, and any interlocutory appeal. This subsection is similar to former Standard 12-2.3(a)(i), except that it does *not* provide

34. See, e.g., Speedy Trial Act of 1974 as amended, 18 U.S.C. §3161(h)(8)(C); FL R. Crim. P 3191(f).

for automatic exclusion of the time required for hearings on pretrial motions, a topic now covered in Standard 12-2.3(b).

Standard 12-2.3(a)(ii) provides for exclusion of time when a defendant is physically unavailable for trial because of involvement in proceedings in a different court. The prosecutor should not be held responsible for the delay in these circumstances.

Standard 12-2.3(a)(iii) provides for exclusion of time that elapses during a continuance requested by the defense or granted with the consent of the defense. Delay attributable to a continuance requested or consented to by the defendant is commonly excepted by statute from speedy trial limitations. The provision in this Standard that calls for the trial court to advise unrepresented defendants of their right to a speedy trial and of the effect of agreeing to a continuance is intended to protect a defendant without counsel from forfeiting a prompt trial because of ignorance of his or her rights. This section of the Standard is virtually identical to former Standard 12-2.3(c) and also to provisions in the Uniform Rules of Criminal Procedure and to the NDAA Standards addressing speedy trial issues.

Standard 12-2.3(a)(iv), which provides for exclusion of any time that elapses during a delay caused by the defendant's failure to appear for court proceedings, is consistent with other provisions that exclude periods of time during which the case cannot move forward due to actions (or lack of required action) by the defendant.

Standard 12-2.3(a)(v) excludes time when the defendant has been joined for trial with a codefendant as to whom the speedy trial time limit has not run, provided that the court makes a determination that the interests of justice served by the joinder outweigh the defendant's right to have the trial held within the originally prescribed time limits. This provision is similar to former Standard 12-2.3(g), which provided for exclusion of "a reasonable period of delay" when there is good cause for not granting a severance.

Standard 12-2.3(a)(vi) provides a "safety valve" that allows for exclusions of other reasonable periods of time when circumstances warrant exclusion for good cause shown.³⁵ As with a determination on the joinder issue pursuant to subsection (a)(v), if the court makes a determination that such an exclusion of time should be granted, it should set forth on the record its reasons for finding that the interests of justice

35. The federal Speedy Trial Act contains a similar provision (18 U.S.C. §3161(h)(8)(A)) as do some state statutes and rules of court (*e.g.*, Florida R. Crim Procedure, Rule 3.191(l)); Washington R. Cr. Procedure, Rule 3.3 (f) (2).

served by the granting of the continuance (and the exclusion of time) outweigh the defendant's right to have the trial held within the originally prescribed limits.

In providing for exclusion of "reasonable periods of time" when there are special circumstances warranting a continuance, this Standard rejects the idea of an "open-ended" continuance in the interests of justice.³⁶ Rather, a definite date should be set for the trial or other next court event, and should be confirmed with the prosecution and defense as provided in Standard 12-2.6(c), *infra*.

The requirement that the court set forth its reasons for granting a continuance in these circumstances is intended to ensure that the trial judge gives appropriate consideration to the relevant factors.³⁷ Having the trial court's rationale in the record also provides a basis for appellate review.

Standard 12-2.3(b)

Standard 12-2.3(b) sets forth a policy concerning exclusion of the time required for considering and deciding on pretrial motions that is different from the policies in previous editions of the *Speedy Trial Standards*. Both the First and Second Edition Standards provided for

36. Most federal appellate courts, considering the application of the federal Speedy Trial Act's provisions for exclusion of time in the interests of justice, have taken the position that any continuance should be to a specific date. *See, e.g.,* United States v. Pollock, 726 F.2d 1456, 1461 (9th Cir. 1990); United States v. Gambino, 59F.3d (2d Cir. 1995), *cert. denied* 517 U.S. 1187 (1996). For detailed discussion of this issue see J. Andrew Read, "Open-Ended Continuances: An End Run Around the Speedy Trial Act", 5 George Mason L. Rev 733-760 (1997); also Greg Ostfeld, "Speedy Justice and Timeless Delays: The Validity of Open-Ended 'Ends of Justice' Continuances Under the Speedy Trial Act", 64 Univ. of Chicago L. Rev 1037-1066 (1997). Both articles reject the open-ended continuance approach.

37. The federal Speedy Trial Act calls for the trial court to set forth reasons for granting an "ends of justice" continuance. The Supreme Court emphatically reinforced this requirement in *Zedner v. United States*, 547 U.S. ____ (dec'd June 5, 2006), making it clear that exclusion of time is dependent on the trial court setting forth its reasons any time it grants a continuance on these grounds. Other federal appellate courts have also insisted on having reasons clearly set forth in the record. *See, e.g.,* United States v. Tunnessen, 763 F.2d 74,76-77 (2d Cir. 1985); United States v. Jordan, 915 F.2d 563, 565-66 (9th Cir. 1990); United States v. Hill, 197 F.3d 436 (10th Cir. 1999).

unqualified exclusion of time for hearings on pretrial motions.³⁸ This Standard provides that exclusion of this time is discretionary with the court, which may approve an exclusion of the time either upon request or on its own motion. Following this approach limits the ability of the prosecutor to extend the speedy trial time simply by filing a motion that will require consideration by the court. Consistent with Standard 12-2.3(a)(vi), exclusion of time for consideration and disposition of motions should be for a reasonable period of time, with a determination made by the trial court that such exclusion is in the interests of justice.

Standard 12-2.3(c)

This Standard addresses the situation where a trial date that is outside the speedy trial time limit has somehow been set by the court without objection by the defendant or defendant's counsel. Experience indicates that this can happen inadvertently. The Standard provides that in these circumstances the failure to object should be deemed consent to an extension of the speedy trial time limit to the scheduled date, with the time that elapses to be excluded in computing time under the speedy trial rule or statute.³⁹

Standard 12-2.4 Special procedures applicable to persons serving terms of imprisonment

To protect the right to speedy trial of a person serving a term of imprisonment either within or without the jurisdiction, it should be provided by rule or statute that:

(a) if the prosecuting attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a penal

38. The federal Speedy Trial Act provides in §3161(h)(1)(F) for exclusion of any period of 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.” Interpreting this provision in *Henderson v. United States*, 476 U.S. 321 (1986), the Supreme Court ruled 5-4 that it provides for exclusion of the entire period of time taken for disposition of a motion, without regard to the reasonableness of the time.

39. See, e.g., WA Superior Court Rule CrR 3.3 (d) (4) and 3.3 (g). A similar approach has been taken by the U.S. Supreme Court in interpreting the applicability of time limits contained in the Interstate Agreement on Detainers when a defendant's counsel failed to object to the setting of a trial date that was outside the time limit for trial set by that law. *New York v. Hill*, 528 U.S. 110 (2000).

institution of that or another jurisdiction, the prosecuting attorney should promptly:

(i) undertake to obtain the presence of the prisoner for trial;

or

(ii) cause a detainer to be filed with the official having custody of the prisoner and request the official to so advise the prisoner and to advise the prisoner of the prisoner's right to demand trial;

(b) if an official having custody of such a prisoner receives a detainer, the official should promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs such official that the prisoner does demand trial, the official shall cause a certificate to that effect to be sent promptly to the prosecuting attorney who caused the detainer to be filed;

(c) upon receipt of such certificate, the prosecuting attorney should promptly seek to obtain the presence of the prisoner for trial; and

(d) when the official having custody of the prisoner receives from the prosecuting attorney a properly supported request for temporary custody of such prisoner for trial, the prisoner should be made available to that prosecuting attorney (subject, in cases of interjurisdictional transfer, to the traditional right of the executive to refuse transfer and the right of the prisoner to contest the legality of the delivery).

History of the Standard

This is former Standard 12-3.1. There are minor editorial changes.

Related Standards

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722(f)(10)

NDAA National Prosecution Standards (2d ed., 1991), Standard 63.10

Commentary

In the past, some states have refused to apply their speedy trial laws to an accused imprisoned in another state. This position was justified on the ground that the state cannot go to trial without the consent of the

incarcerating jurisdiction and that a defendant cannot complain of a situation for which he or she is responsible. In 1969, however, the Supreme Court held in *Smith v. Hovey* that, upon demand by a defendant, the jurisdiction charging the defendant but not having the defendant in custody must make a “diligent good-faith effort” to obtain the defendant’s presence for a speedy trial.⁴⁰ Four years later, in *Braden v. 30th Judicial Circuit of Kentucky*, the Supreme Court held that a defendant could assert this right in a *habeas corpus* proceeding in the state without custody.⁴¹ However, the Court provided no legal framework by which the charging state could obtain the defendant’s custody to conduct a trial.

This Standard calls on states to adopt a rule or statute that protects the right of imprisoned defendants to a speedy trial, setting forth a series of steps that are consistent with provisions of the Interstate Agreement on Detainers⁴² but go beyond this interstate compact in providing specific directions to the prosecutor and the warden or other official who has custody of the prisoner. Under Standard 12-2.4, the burden would be upon the prosecutor in the first instance. When a prosecutor knows that a person charged with a criminal offense is serving a term of imprisonment, the prosecutor should either (a) seek to obtain the prisoner’s presence for trial; or (b) cause a detainer to be filed with the prison official having custody of the prisoner and request that official to inform the prisoner of the detainer and of the prisoner’s right to demand trial.

Standard 12-2.4(b) sets forth the duty of the prison official to give appropriate notice to the defendant whenever the official has received a detainer for the prisoner, to ensure that the defendant knows of the charge(s) and of the right to demand trial. Additionally, this paragraph sets forth the obligation of the prison official to promptly inform the prosecutor if the prisoner makes a demand for trial.

Standard 12-2.4(c) calls for the prosecutor, upon receiving a certificate indicating that a prisoner demands trial, to act promptly in seeking to obtain the presence of the prisoner for trial. If the prisoner is incarcerated outside the state then the prosecutor should take whatever legal steps may be required to obtain the prisoner’s presence. Standard

40. *Smith v. Hovey*, 393 U.S. 374. at 383.

41. 410 U.S. 484 (1973).

42. 18 U.S.C. App § 2 (1976). The Interstate Agreement on Detainers is a compact entered into by 48 states, the District of Columbia, and the United States, that establishes procedures for resolution of one state’s outstanding charges against a person who is in prison in another state.

12-2.4(d) states the general responsibility of the incarcerating authorities to make the prisoner available upon proper demand. This paragraph includes a qualification that recognizes the right of the executive in the incarcerating state to deny extradition and the right of the prisoner to contest the legality of the transfer.

Standard 12-2.5 Computation of time for persons serving terms of imprisonment

The time for purposes of the right to a speedy trial in the case of a prisoner whose presence has been obtained while the prisoner is serving a term of imprisonment should commence running from the time the prisoner's presence for trial has been obtained. If the prosecuting attorney has unreasonably delayed causing a detainer to be filed with the custodial official or delayed seeking to obtain the prisoner's presence for trial in lieu of filing a detainer or upon receipt of a certificate of demand, such periods of unreasonable delay should also be counted in ascertaining whether the time has run.

History of the Standard

This is former Standard 12-3.2. There are minor editorial changes.

Related Standards

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722(f)(1)

NDAA National Prosecution Standards (2d ed., 1991), Standard 63.10

Commentary

The first sentence of this Standard provides that the speedy trial time limit begins running only after the prisoner's presence for trial has been obtained. This appears to be the most appropriate point at which to commence computation of the time limit. However, it is the responsibility of the prosecutor—set forth in Standard 12-2.4(a) and (c)—to act with due diligence in determining whether the prisoner wants trial and, when the prisoner does request a trial, to obtain his or her presence. The second sentence of this Standard provides that if the

prosecutor has caused undue delay in causing a detainee to be filed with the custodial official or in seeking to obtain the prisoner's presence, the period of unreasonable delay should be counted in computing the time allowed under the applicable speedy trial time limit.

Standard 12-2.6 Implementation of speedy trial time limits

In adopting a rule or statute that establishes speedy trial time limits, jurisdictions should provide that:

(a) an indictment, information, or other formal charging instrument should be filed within [30] days after the defendant's first appearance in court after either an arrest or issuance of a citation or summons, so that defendants receive prompt notice of the charges on which they will be held to answer and have adequate opportunity to prepare for pretrial motions and for trial within the speedy trial time limit period;

(b) at the time of the defendant's first appearance in court after either the filing of a charging instrument or the issuance of a citation or summons, the court should advise the defendant of the right to a speedy trial and of the presumptive speedy trial time limit, and should inform the defendant that the granting of a continuance requested or consented to by the defense will have the effect of lengthening the speedy trial time limit period; and

(c) at any time that action is taken that has the effect of extending the time otherwise allowed under the speedy trial rule or statute, the court should set forth its reasons on the record and should confirm, with the prosecution and the defense, the date by which a trial must be held or the case otherwise resolved. The new date should be noted on the record.

History of the Standard

This Standard is new.

Related Standards

ABA Standards for Criminal Justice, Pretrial Release (3d ed., 200_), Standard 10-4.3

Commentary

This Standard contains three provisions aimed at making the right to a speedy trial meaningful.

Standard 12-2.6(a) - Requirement for prompt filing of an indictment or other superseding charging instrument

Standard 12-2.6(a) addresses the problem of pre-indictment delays—a problem that occurs all too often in jurisdictions that have a “two-tier” system of criminal courts, with a limited jurisdiction court responsible for initial proceedings in felony cases and a general jurisdiction court receiving the case only after an indictment or other formal charging instrument has been filed. In some jurisdictions it has been common for the pre-indictment period to last for many weeks, and even months—sometimes without the defendant being represented by counsel.

Typically, a complaint charging a defendant with a criminal offense will have been filed—by a police officer, a civilian complainant, or a prosecutor—at or shortly after the arrest. However, this complaint may be simply an initial charging instrument, and the actual charges on which the defendant will be tried are sometimes not filed until after further investigation. Under this Standard, a maximum period of 30 days is allowed between a defendant’s first appearance and filing of the charges on which the defendant will be tried.⁴³ The Standard should be read in conjunction with Standard 12-2.1(b), which provides for recommended speedy trial time limits of 90 days for defendants in detention and 180 days for defendants on pretrial release, with the time limits to commence at the time of the defendant’s first court appearance following arrest or issuance of a citation or summons. The Standard does not provide for a specific sanction for delay in the filing of an indictment or other superseding charging instrument. However, such delays can and should be taken into account in setting the speedy trial time limits that will be applicable in the trial court. The intent of Standards 12-2.1(b) and 2.6(a), read together, is to create a presumptive 90-day speedy trial time period that begins at the time of a defendant’s first court appearance and includes any time required for proceedings in a limited jurisdiction court prior to the filing of an indictment or information.

For example, in the case of a defendant arrested on felony charges in a jurisdiction with a “two-tier” court system, the speedy trial time limit

43. The federal Speedy Trial statute has a similar provision, allowing a 30-day period between arrest and indictment, extendable by 30 days if grand jury not in session during that period. See 18 U.S.C. §3161 (b).

would begin at the time of the defendant's first appearance in a limited jurisdiction court following the filing of any type of charging instrument, however informal, as provided in Standard 12-2.1(b) and 12-2.2(a). The filing of a new "formal" charging instrument (*e.g.*, a felony indictment filed in the general jurisdiction trial court) would call for the general jurisdiction trial court to set a new speedy trial time limit that could be shorter than the recommended periods of 90 days from the first post-arrest court appearance for defendants in detention and 180 days for defendants on pretrial release. In setting the new limit, the trial court should take account of factors such as the degree to which the new charge is different from the original charge; whether the new [superseding] instrument alleges facts that were known to the prosecution at the time the original charge was filed; and the time that has elapsed between the defendant's first appearance in the limited jurisdiction court and the appearance on the new "formal" charge (see Standards 12-2.2(a), *supra*).

Standard 12-2.6(b) - Court advice to the defendant concerning speedy trial rights and effect of consenting to a continuance

This Standard provides for the court conducting a first appearance proceeding to advise the defendant of the right to a speedy trial, of the applicable presumptive speedy trial time limit, and of the effect that a defense request for a continuance (or agreement to a continuance) will have in extending the speedy trial time limit period. The intent is to focus the attention of the court and all of the parties on this topic at the outset of the case.

Standard 12-2.6(c) - Record of dates and reasons when the speedy trial time limit is extended

A problem sometimes encountered in the practical administration of speedy trial rules and statutes is difficulty in computing the passage of time chargeable against the time limit. This Standard seeks to minimize confusion and possible "gamesmanship" in the application of time limits by providing that, at any time an action is taken that has the effect of extending the time otherwise allowed under the speedy trial rule or statute, the court is to indicate, on the record, the reasons for the extension. It also provides for the court to confirm—with both prosecution and defense—the date by which a trial must be held or the case otherwise resolved, and for that date to be noted on the record.

Standard 12-2.7 Effects of exceeding the speedy trial time limit period

(a) If a defendant who is in pretrial detention is not brought to trial and the case is not otherwise resolved before the expiration of time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should:

(i) order that the defendant be released from detention under conditions set in accordance with the *ABA Criminal Justice Standards on Pretrial Release* that best minimize the risk of flight and the risk of danger to the community or any person, and set the trial to begin on a date within the speedy trial time limit period for defendants on pretrial release, provided, however, that

(ii) if no condition or combination of conditions of release will reasonably protect the safety of the community or any person:

(A) the court should not order the defendant's release, and should set the trial to begin as expeditiously as possible, receiving the highest possible priority on the court's trial docket and in any event to begin within [15] days, unless the defendant requests a longer period not to exceed [45] days; and

(B) if the trial does not begin within the time set pursuant to subdivision (A), the court should order that the defendant be released from detention under conditions that, to whatever extent reasonably possible, minimize the risk of flight and the risk of danger to the community or any person, and reset the defendant's trial to begin on a date within the speedy trial time limit period for defendants on pretrial release.

(b) If a defendant who is on pretrial release is not brought to trial or the case is not otherwise resolved before the expiration of the time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should ordinarily dismiss the charges with prejudice, provided, however, that:

(i) after affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit for a period not to exceed [30] days beyond the date on which the

expiration of time is determined by the court, unless the defendant requests a longer period not to exceed [75] days.

(ii) In determining whether and for what period to order such an extension, the court should consider the totality of the circumstances, including:

(A) the gravity of the offense;

(B) the reasons for the failure to bring the defendant to trial within the previously-established time limit;

(C) the extent to which the prosecution or the defense is responsible for the delay; and

(D) the extent of the prejudice to the interests of the defense, the prosecution, or the public that may result from the extension of time or the dismissal of the charges.

(iii) If the court sets an extended period of time pursuant to this paragraph but the trial does not commence within the extended period, the charges should be dismissed with prejudice.

(c) In making a determination concerning actions taken with respect to detention, dismissal, or fixing a date for the commencement of trial pursuant to this standard, the court should set forth, on the record, the reasons for its ruling.

(d) Dismissal of the charge(s) with prejudice pursuant to this standard should forever bar prosecution for the offenses charged and for any other offense required to be joined with that offense.

History of the Standard

This Standard is an expanded and substantially revised version of Part IV of the former Standards, covering former Standards 12-4.1 and 12-4.2. Of particular note, the sanction of absolute discharge for failure to bring the defendant to trial within the allowable period has been modified by allowing for limited extension of the applicable speedy trial time limit period under some circumstances. The ultimate consequence for failure to commence the trial within the applicable period remains dismissal of the charge(s) with prejudice, barring any future prosecution of the defendant for the offense charged and for any other offense required to be joined with that offense.

Related Standards

ABA Standards for Criminal Justice, Pretrial Release (3d ed., 200_), Standards 10-5.11, 10-1.4, 10-5.2, 10-5.3

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 722

NDAAs National Prosecution Standards, Standard 63.9 (2d Ed., 1991)

Commentary

This Standard focuses on what should happen in the situation where a defendant, through inadvertence or mistake, has not been brought to trial within the speedy trial time limit period. The wording of the Standard reflects a judgment that inadvertent error should not result in a “windfall” for the defendant, through release from detention or, if already on release, through dismissal with prejudice. At the same time, there needs to be a clear “drop dead” date by which the defendant must be brought to trial (or the case otherwise resolved) or truly meaningful sanctions will be imposed against the prosecution. The balancing of these conflicting considerations is found in new Standards 12-2.7(a) and (b).

Standard 12-2.7 (a) addresses what should happen when a defendant who is in pretrial detention has not been brought to trial and the case has not been otherwise resolved before the expiration of time allowed under the speedy trial rule or statute. It provides in subsection (i) that the consequence should be release of the defendant under conditions set in accordance with the ABA Standards on *Pretrial Release* that best minimize the risk of flight and danger to the community or any person, with the trial date to begin on a date within the speedy trial time limit for persons on pretrial release. This approach is basically consistent with former Standard 12-4.2, which provided that if a shorter time limit is applicable to defendants in custody than to defendants on pretrial release, then the running of the time for trial should only require the release of the defendant on his own recognizance. However, subsection (ii) provides for a significant exception to this basic approach for cases involving detained defendants when the court determines that no condition or combination of conditions of release will reasonably protect the safety of the community or any person—*i.e.*, the situation where the speedy trial time limit has run (or is about to expire) on a defendant in detention whose release would constitute a serious risk of danger.

In this circumstance, subsection (a)(ii) provides for the court to keep the defendant in detention but to set the trial to begin within 15 days unless the defendant requests a longer period. If the trial doesn’t begin within the 15 day period (or within 45 days if a longer period is requested by the defense), then the defendant is to be released from detention under conditions that, to whatever extent reasonably possible, minimize the risk of flight and the risk of danger to the community or

any person, and the trial should be set to begin on a date within the speedy trial time limit period for persons on pretrial release. The practical effect is to add an additional 15 days on to the speedy trial time limit period in cases where the court determines that there is a real risk that release of a defendant in detention will pose an unacceptable risk of danger to the community or to individuals.⁴⁴

Standard 12-2.7(b) deals with the consequences of the running of the speedy trial time limit in cases involving defendants already on pretrial release, including formerly detained defendants whose release from detention was caused by the running of the speedy trial time limit applicable to defendants in custody. It provides that the consequence for failure to bring a defendant on pretrial release to trial within the speedy trial time limit period should ordinarily be dismissal of the charges with prejudice. However, subsection (i) provides for an exception that may allow an extension of the period under unusual circumstances. After affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit for a period not to exceed 30 days, unless the defendant requests a longer period not to exceed 75 days. This Standard provides in subsection (ii) that, in considering whether to grant such an extension, the court should consider the totality of the circumstances. Factors to be taken into account include the gravity of the offense, the reasons for the failure to bring the defendant to trial within the previously established time limit, the extent to which the defense or the prosecution is responsible for the delay, and the extent of prejudice to the interests of the defendant, the prosecution, or the public that may result from an extension of the time limit or from dismissal of the charges.

The overall objectives of new Standard 12-2.7, particularly when read together with the other Standards in new Part II, are to eliminate “gamesmanship” in the computation of speedy trial time limits; to help ensure that the right to a speedy trial is meaningful; to provide safeguards against inadvertent miscalculations of the applicable time limits; and to

44. During the drafting process, a question was raised as to whether this provision is consistent with Standard 10-5.11 of the ABA *Pretrial Release Standards*, which provides that failure to try a detained defendant within the time limit applicable to detained defendants should result in the defendant’s immediate release from detention under conditions that best minimize the risk of flight and danger to the community. The two provisions can be reconciled by treating the speedy trial time limit period as including the extra 15 days in situations where it has been determined that release of the defendant would pose a serious danger to the community or any person.

encourage the court, prosecution, and defense to be sure that all are clear on the calculation of the speedy trial time limit period. Of particular note, this Standard now contains “escape clauses” applicable to both detained defendants [subsection (a)] and defendants on pretrial release [subsection (b)]. However, the additional periods allowed under these subsections are short—a maximum of 15 days of continued detention under subsection (a) and a maximum of 30 days before the charges will be dismissed in the case of released defendants covered by subsection (b). These periods can be extended only if the defendant requests a longer period—for example, if defense counsel needs additional time because of a conflict in another case. If the trial date set under these special provisions passes without a trial being started or the case being resolved in some other fashion, detained defendants must be released under appropriate conditions and already released defendants must have the charges against them dismissed with prejudice.

PART III
STANDARDS FOR TIMELY RESOLUTION
OF CRIMINAL CASES

Standard 12-3.1 The public's interest in timely case resolution

The interest of the public, including victims and witnesses, in timely resolution of criminal cases is different from the defendant's right to a speedy trial. This interest should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial. Reasons for developing effective policies and standards aimed at timely resolution of criminal cases include:

- (a) preserving the means of proving the charge(s) against the defendant;
- (b) maximizing the deterrent effects of prosecution and conviction;
- (c) increasing the likelihood that rehabilitative purposes of a sentence imposed if the defendant is convicted will be achieved;
- (d) minimizing the length of the periods of anxiety for victims, witnesses and defendants, and their families;
- (e) avoiding extended periods of pretrial freedom for defendants who pose risks of public safety or risks of flight;
- (f) reducing repetitious handling and review of files by police officers, prosecutors, defense counsel, judges, court staff, and others involved in cases;
- (g) reducing costs for jail operation (and avoiding or minimizing the costs of new jail construction) as the length of pretrial detention is minimized for defendants held in custody;
- (h) reducing the caseload pressures on pretrial services agencies, as the length of time on supervised release is minimized for released defendants;
- (i) better utilizing limited resources, and enhancing the opportunity for all of the institutions, agencies, and practitioners involved in criminal case processing to address high priority cases and issues; and
- (j) increasing public trust and confidence in the justice system.

History of the Standard

This Standard is new.

Related Standards

ABA Standards for Criminal Justice, Special Functions of the Trial Judge (3d ed., 2000), Standard 6-1.5

ABA Model Code of Judicial Conduct (2004 edition), Canon 3B(8) and 3C(3)

ABA Standards Relating to Trial Courts (1992 edition), Standards 2.31, 2.50-2.55

Commentary

The commentary to both the First and Second Edition of the *Speedy Trial* Standards noted that the Standards sought to define and protect the interests of both defendants and the public in prompt trial, but the black letter Standards of the previous editions focused almost exclusively on the defendant's right to a speedy trial. This Standard introduces Part III of the Third Edition Standards, an entirely new part that is designed to complement the concern about protection of the defendant's right to a speedy trial with appropriate attention to public interests in timely resolution of criminal cases whether or not they go to trial.

The two previous editions of the *Speedy Trial* Standards included, in former Part I, three approaches to calendar management that attempted to address both the defendant's right to a speedy trial and the public interest in prompt disposition of criminal cases. Former Standard 12-1.1 provided that, insofar as is practicable, the trial of criminal cases should be given preference over civil cases. Former Standard 12-1.2 provided for vesting control over the trial calendar in the court, with the prosecutor required to file periodic reports on cases for which trial had not been requested. Former Standard 12-1.3, on continuances, provided that the court should grant continuances only upon a showing of good cause and only for as long as is necessary "taking into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case." In this Edition, the preference for trial of criminal cases over civil cases has been dropped, but the main ideas contained in former Standards 12-1.2 and 12-1.3 now appear in Part IV

of the new Standards, *infra*.⁴⁵

The experience of more than two decades has demonstrated that primary reliance on the provisions of speedy trial laws and rules—which can be waived by defendants, who sometimes prefer delays rather than expeditious resolution of the case—provides insufficient protection for public interests in appropriately prompt resolution of criminal cases. Such laws and rules are desirable for all of the reasons discussed above in the commentary to Standard 12-1.1, but they are not enough. Court control of the calendar and restrictive policies and practices concerning the granting of continuances are also part of an overall plan for reducing delays, but a broader approach is needed. This Standard calls for jurisdictions to adopt a comprehensive set of standards and policies designed to produce timely resolution of criminal cases regardless of whether or not the defendant actively seeks a speedy trial.

Subparagraphs (a) through (j) of this Standard provide a list of reasons for the adoption of such policies and standards. Previous editions of the *Speedy Trial* Standards have noted many of these reasons in commentary. This Standard elevates the adoption of specific policies and standards designed to further the public interest in timely case resolution—and the reasons for doing so—to black letter.

Standard 12-3.2 Goals for timely case resolution

(a) Each jurisdiction should develop and adopt goals and policies that provide a framework for assuring that all criminal cases are resolved within a time period that is appropriate for the seriousness and complexity of the case.

45. The emphasis on court control of the calendar (expanded to include not only the trial calendar but all calendars on which a case may be placed) and on taking account of the public interest in timely resolution of cases when ruling on continuances is now in Standards 12-4.3(n) and 12-4.5(a). The concept of court monitoring of cases for which trial has not been requested has been substantially broadened and is addressed in new Standards 12-4.3(m), and 4.5(b). The preference for trial of criminal cases over civil cases has been dropped in recognition of two realities: (1) that some types of civil cases are, by any measure, at least as deserving of a preference in utilization of scarce courtroom time and space as most criminal cases; and (2) that calendar management in a court is an extremely complicated undertaking that can be made even more difficult by a system of preferences which limits the flexibility of judges and court staff in managing caseloads.

(b) Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (2) the time periods between major case events. In establishing these goals, jurisdictions should take account of the seriousness and complexity of cases of different types.

(c) Goals for timely resolution of criminal cases should be developed collaboratively, with involvement of all of the institutions and agencies that have roles in criminal case processing in the jurisdiction, and with the participation of members of the public. Leaders of all of the institutions and agencies involved should participate in the process, should support the standards that are developed, and should seek to establish policies and procedures within their own organizations that will help achieve the standards. The jurisdiction's goals for timely resolution should address at least the following time periods:

- (i) arrest to first appearance;**
- (ii) citation to first appearance;**
- (iii) first appearance to filing of an indictment, information or other formal charging document in the court in which the charge is to be adjudicated;**
- (iv) first appearance or filing of the formal charging document to completion of pretrial processes (i.e., completion of all discovery, motions, pretrial conferences, and plea, dismissal, or other disposition in cases that will not go to trial);**
- (v) completion of pretrial processes to commencement of trial or to non-trial disposition of the case;**
- (vi) verdict or plea of guilty to imposition of sentence; and**
- (vii) arrest or issuance of citation to disposition, defined for this purpose as plea of guilty, entry into a diversion program, dismissal, or commencement of trial.**

(d) Goals for timely resolution of criminal cases are intended to provide guidance for judges, counsel, court staff, officials in criminal justice agencies, defendants, witnesses, general government, and the public concerning the scheduling of criminal cases and management of criminal caseloads. The establishment of such goals should not create any rights for defendants or others.

History of the Standard

This Standard is new.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.50-2.55

NDA National Prosecution Standards (2d ed., 1991), Standard 65.1

Commentary

This Standard focuses on the responsibility of jurisdictions to establish goals—framed in terms of maximum time periods for the stages of criminal cases as well as for the overall time from inception to conclusion of the case—aimed at achieving timely resolution of criminal cases. The Standard has been drafted in a fashion that is consistent with the case processing time standards and other components of effective caseflow management contained in Standards 2.50-2.55 of the ABA *Standards Relating to Trial Courts*. Much of the progress that has been made in reducing unnecessary delays in criminal cases over the past twenty years can be attributed to the influence of those Standards, which focus on the responsibilities of trial courts to minimize court delays, provide specific time standards for different categories of cases, and call for each court to have a program to reduce and prevent delay. As the commentary to Standard 2.51 of those Standards states, “Goal setting is a precondition to the achievement of management results.”⁴⁶

46. ABA *Standards Relating to Trial Courts*, commentary to Standard 2.51 (b) (1992 ed.). That Standard lists “promulgation and monitoring of time and clearance standards for the overall disposition of cases” as one of seven essential elements of case management in a trial court. For discussion of the key role that case processing time standards and other management goals have played in successful criminal case delay reduction and delay prevention programs in American courts, see William Hewitt *et al.*, *Courts That Succeed: Six Profiles of Successful Courts* (Williamsburg: National Center for State Courts, 1990), esp. pp. 17-18 (Montgomery County [OH] Court of Common Pleas); 36-37 (Detroit [MI] Recorder’s Court); and 72-73 (Fairfax [VA] Circuit Court); also John Goerdts, “Slaying the Dragon of Delay: Findings from a National Survey of Recent Court Programs,” *The Court Manager*, Vol. 12, No. 3 (Summer 1997), pp. 30-37; Maureen M. Solomon, Caroline S. Cooper, and Holly Bakke, “Building Public Trust and Confidence Through Effective Caseflow Management” in Gordon M. Griller and E. Keith Stott, Jr., Eds, *The*

The ABA's *Standards Relating to Trial Courts* set forth specific time standards for different types of cases while recognizing that cases that fall into the same broad category (e.g., "felonies") may differ considerably in their seriousness and complexity. For felony cases, the standard is that 90% should be adjudicated or otherwise concluded within 120 days from the date of arrest; 98% within 180 days; and 100% within one year.⁴⁷ For misdemeanor cases, the standard is appreciably tighter: 90% to be adjudicated within 30 days from the date of arrest or citation and 100% within 90 days.⁴⁸ The longer time periods for a small fraction of the cases reflects the reality that a small number of cases are sufficiently serious or complex that lengthier periods will be needed to bring them to resolution.

These ABA case processing time standards for trial courts provide useful guidelines for jurisdictions in developing goals appropriate for their own circumstances. The time periods recommended for 90 percent of the cases (e.g., 120 days for felony cases) reflect the periods that thoughtful practitioners have identified as appropriate for all cases that are not unusually complex. Some cases can clearly be resolved in much shorter periods. In developing time standards for intermediate stages of criminal cases as called for by Standard 12-3.2(c), the overall periods set forth in Standard 2.52(e) of the *Standards Relating to Trial Courts* can be subdivided into periods that reflect the amount of time actually needed for completion of essential work on the case in each stage.

Case processing time standards based generally on the ABA's Standards, though differing in some details, have been adopted by the Conference of Chief Justices and the Conference of State Court Administrators, and by a number of state supreme courts.⁴⁹ The case processing time standards adopted by court system leaders—when taken seriously by the courts and by other the leaders of other key institutions involved in the processing of criminal cases—can and have had a major impact on problems of court delay. However, it has also become increasingly clear over the period since the initial adoption of these Standards by the ABA that—in part because much of the pretrial process

Improvement of the Administration of Justice (Seventh Edition) (Chicago: American Bar Association, 2002), esp. p. 114.

47. ABA *Standards Relating to Trial Courts* (1992 ed.), Standard 2.52(e)(i).

48. *Id.*, Standard 2.52 (e) (ii).

49. See the online report by Heather Dodge and Kenneth Pankey, *Case Processing Time Standards in State Courts, 2002-03* at http://www.ncsconline.org/WC/Publications/KIS_CasManCPTSPub.pdf.

in criminal cases is not directly within the control of the trial court—it is important to develop system-wide commitment to goals for timely resolution of criminal cases. While courts may often have a leadership role in identifying problems of case processing delays and initiating action, there are many sources of the problems. Eliminating backlogs and achieving the goals of timely case resolution will generally require cooperation and commitment from many different institutional entities within a jurisdiction.

Standards 12-3.2(a) through (c) address the need for system-wide goals and policies aimed at assuring appropriately prompt resolution of cases. The guts of such a framework are goals for timely case resolution, reinforced by practical policies that will support achievement of the goals. The goals should indicate what constitutes acceptable time periods for timely case resolution, both overall (from the commencement of the case to its disposition) and for the principal intervals between events in the life of a criminal case.⁵⁰

In defining “disposition” for purposes of setting time standards, Standard 12-3.2 (c) refers to four possible outcomes: plea of guilty, entry into a diversion program, dismissal, or commencement of trial. This definition is simple and workable, and is also consistent with definitions that have been used in several major studies of case processing times in criminal cases.⁵¹ This approach does not provide for any standards concerning the actual length of the trial (including jury deliberations) once a trial begins. However, it should be noted that ABA policy encourages the use of trial management practices that can make the

50. See, e.g., the model case timetable developed by the President’s Crime Commission, which proposes a maximum time period of four months for a felony case and outlines suggested maximum time intervals between key events. The Commission’s Report notes that in many cases the time periods could be appreciably shorter. President’s Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: Government Printing Office, 1967), pp 154-156; also Ernest C. Friesen *et al.*, *Arrest to Trial in Forty-five Days* (Los Angeles: Whittier School of Law, 1978).

51. See, e.g., Thomas W. Church *et al.*, *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg: National Center for State Courts, 1978), p. 16 note 9; John Goerdts *et al.*, *Examining Court Delay* (Williamsburg: National Center for State Courts, 1989), p. 5; Steven Flanders *et al.*, *Case Management and Court Management in the United States District Courts* (Washington, D.C.; Federal Judicial Center, 1977), p. 139.

conduct of trials more effective while also shortening their length, without sacrificing fairness.⁵²

Importantly, Standard 12-3.2(c) emphasizes the desirability of collaborative development of the goals. This approach recognizes the importance of having the buy-in and commitment of all of the organizational entities that have roles in criminal case processing and also of having public understanding and support for the goals. The Standard calls on leaders of all of the relevant institutions and agencies to participate in the goal-setting process, to support the goals and standards that emerge from the process, and to seek to establish policies and procedures within their own organizations that will help the jurisdiction achieve the standards.

Standard 12-3.2(d) makes it clear that the goals for timely case resolution that are developed through such a process are intended to provide guidance for policymakers and practitioners. They do not create any rights for defendants or others.

Standard 12-3.3 Monitoring and accountability

(a) Each jurisdiction should establish procedures to monitor the performance of the system (and of each of the organizational entities that have responsibility for particular aspects of case processing) in relation to the goals for timely case resolution. Feedback should be provided to the leaders of the courts, the prosecutor's office, the defense bar, law enforcement agencies, other criminal justice agencies, and general government.

(b) Information about the performance of the system in relation to the goals for timely case resolution should be made available to the public on a regular basis.

History of the Standard

This Standard is new.

52. See American Bar Association Judicial Administration Division, *ABA Trial Management Standards* (Chicago: American Bar Association, 1993) and *ABA Principles for Juries and Jury Trials*, Principle 12 (Chicago: American Bar Association, 2005).

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.52, 2.54(a)(iii), 2.82(b)

Commentary

This Standard focuses on methods for accomplishing the goal of timely case resolution. As in many other areas of organizational life, the availability and use of information can be extremely important. A common aphorism—“what you count counts”—has repeatedly proven applicable in criminal justice as in other areas of organizational life. Practitioners pay particular attention to aspects of their work that are the subject of quantitative measurement. When goals for timely resolution of cases are established, the performance of the local criminal justice system and its constituent entities, in relation to those goals, should be monitored.

The technology required for such monitoring clearly exists. Indeed, the revolution in information and communications technology that has taken place in the past two decades makes it possible for justice system leaders to have (or very rapidly obtain) all of the basic information needed for monitoring caseloads and tracking the progress of individual cases. It is now possible to obtain—virtually instantaneously—information that in the not-too-distant past would have required many days or weeks of manual tabulation. However, the modern technology is generally under-utilized. Although, some individual institutions—notably the trial courts and state administrative offices of courts in some jurisdictions—do a good job of monitoring of case processing times and analyzing the data in relation to established standards, it is difficult to identify jurisdictions that have done this on a system-wide basis that reaches into all or most aspects of criminal case processing beginning at the inception of cases.

As a practical matter, the single most important and useful indicator of a jurisdiction’s effectiveness in managing its caseloads is the size and age of the pending caseload. Assume, for example, that a jurisdiction has a goal of completing 90 percent of its felony caseload within four months of arrest and 100 percent within one year after arrest. With these Standards in place, it would be important for a management information system to produce reports that would (a) indicate the number and percentage of cases pending for various time increments from arrest (e.g., 1-30 days, 31-60 days, etc.); and (b) provide a list of open cases that shows for each case the charges involved, the age since arrest, the

last court event, and the next scheduled event. With such information available, it is easy to compare current performance with the Standards and to identify the cases in need of prompt attention.

This Standard seeks to focus attention not only on the collection of information about performance but also on the dissemination and use of the information. If justice system leaders organize their systems to gather and analyze information on case processing times and make that information widely available, it markedly increases practitioners' consciousness of the public interest in timely case resolution. It should also help reinforce the desirability of organizing case schedules and work practices to enable compliance with the goals that have been set.

Leaders of the institutions and agencies involved in criminal case processing on a day-to-day basis should be aware of the performance of those institutions and agencies and of problems that need attention. However, information about the performance of the justice system should not be provided only to those working within the system. Such information, perhaps in more summary form, should also be made available to general government officials and to the public. The essence of accountability in public institutions is the capacity to measure performance in relation to agreed-upon goals and objectives, and timely resolution of criminal cases is (or should be) unquestionably a high priority goal of any criminal justice system.

Standard 12-3.4 Consistency of timely resolution standards with other justice system policy objectives

In adopting and implementing standards for timely resolution of criminal cases, jurisdictions should ensure that the standards and the policies used to implement them are consistent with the public's interests in the fair and effective prosecution and defense of criminal cases. The system should be structured to enable expeditious resolution of minor cases and of cases that are not complex, while allowing sufficient time for those that will involve relatively complex pretrial processes or extensive trial preparation.

History of the Standard

This Standard is new.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.51(d), 2.52(e), and 2.54

NDAA National Prosecution Standards (2d ed., 1991), Standards 63.2 and 63.3

Commentary

This Standard reinforces a basic point made in the text and commentary for Standard 12-1.1(b): achieving speedy trials and timely resolution of cases should be accomplished in a context that emphasizes the importance of fairness and accuracy in the criminal justice process. Both prosecution and defense need to be able to learn about their cases and need to have adequate time to prepare in order to provide effective representation. The second sentence of the Standard refers to the concept of differentiated case management (“DCM”)—an approach to the overall management of caseloads that, as discussed above in connection with Standards 12-1.3 and 12-3.2, recognizes that cases vary widely in their complexity and in the time required for preparation and court events.

Experience over the past two decades has shown that it is possible to structure the management of cases—by the court and by prosecutors’ offices and defense counsel—in a fashion that enables early identification of cases that are relatively complex and likely to require significant allocation of resources. By the same token, it is also possible to identify cases that are not complicated with respect to the facts, the relevant law, and characteristics of the defendant, and that are thus appropriate for relatively expeditious resolution. Jurisdictions that have adopted this approach have found that they have been able to make more effective use of limited resources and improve their overall case processing.⁵³

53. See, e.g., Suzanne Alliegro *et al.*, “Beyond Delay Reduction: Using Differentiated Case Management,” *The Court Manager*, Vol. 8, No. 1 (Winter 1993), pp. 24-29 (DCM in Pierce County, WA and Middlesex County, NJ) and No. 3 (Summer 1003), pp. 23-30 (DCM in Detroit, MI and Philadelphia, PA); also David C. Steelman *et al.*, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), pp. 5-8, 49, 51-52; Maureen M. Solomon, Caroline S. Cooper, and Holly Bakke, “Building Public Trust and Confidence Through Effective Caseflow Management” in Gordon M. Griller and E. Keith Stott, Jr., eds, *The Improvement of the Administration of Justice (Seventh Edition)* (Chicago: American Bar Association, 2002), esp. pp. 118-120.

PART IV

ORGANIZING JUSTICE SYSTEM RESOURCES TO ACHIEVE TIMELY RESOLUTION OF CRIMINAL CASES

Standard 12-4.1 Operational goals to guide criminal caseload

Each jurisdiction should develop and adopt operational goals, for the system as a whole and for the organizational entities involved in the processing of criminal cases, to guide overall caseload management and case scheduling and to help assure fairness and due process of law. Goals should be established in at least the following areas:

- (a) timely resolution of cases, as described in Standard 12-3.2;**
- (b) firmness/reliability of case scheduling, focused on establishing an expectation that court events will take place when scheduled; and**
- (c) timeliness, accuracy, and completeness of the information entered into court records and into automated management information systems that support case scheduling and caseload management.**

History of the Standard

This Standard is new.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.50-2.55

Commentary

This Standard emphasizes the importance of system-wide goals that will lead to effective policies and high quality performance with respect to criminal caseload by the system as a whole and by all of the entities that are involved in criminal justice in the jurisdiction. The Standard stresses the importance of having operational goals for at least three aspects of system operations: case processing times, effective scheduling of trials and other court events, and timely and reliable recording of case-related information. Each of these areas is related to the others.

The importance of having and seeking to achieve case processing time goals is discussed above in connection with Standard 12-3.2. The other two areas covered in this Standard are ones that are critically important for effective caseload management and timely case resolution. The capacity of a jurisdiction to resolve cases in a timely fashion is dependant in considerable measure on the capacity of the courts and other justice system entities to maintain and have ready access to reliable and complete information about individual cases and overall caseloads. With modern information technology now widely available, it is possible for judges and court administrators to have the needed information very quickly, but only if the data about case events and scheduling decisions is recorded and entered into a management information system very promptly and in a fashion that is consistent and accurate.

Effective management of caseloads involves a capacity to hold trials, motion hearings, and other court events on the dates that they are scheduled, thus minimizing continuances and non-productive court appearances. When lawyers and litigants understand that events will take place when scheduled, they are more likely to be prepared, thus increasing the likelihood of a productive court session and either resolving the case or moving it closer to resolution. Having goals in these areas (and, importantly, measuring actual performance in relation to the goals) heightens the likelihood that cases will in fact be resolved in a timely fashion, taking account of the relative complexity of different cases.

Some jurisdictions might choose to adopt additional goals focused on effective caseload management and improved system operation. For example, a jurisdiction might set an annual “clearance rate” goal of 100 percent or more, aimed at ensuring that it disposes of at least as many cases as are filed during a year and thus preventing or reversing the build-up of a backlog of unresolved cases.⁵⁴ This Standard encourages the development of such goals, emphasizing the value of having goals in the three areas covered in the Standard.

54 . For courts, the clearance rate is a measure of a court’s ability to keep up with incoming cases by disposing of at least as many cases as are filed during the period studied such as a calendar year. The clearance rate is derived by dividing the number of dispositions during a year or other period by the number of filings during the same period. A positive clearance rate (i.e., a clearance rate of over 100 percent) indicates success in at least “staying even” or current with incoming business. In order to eliminate large backlogs of pending cases, courts must maintain a clearance rate well in excess of 100 percent for a number of years.

Standard 12-4.2 Caseflow management practices and procedures

Each jurisdiction should develop caseflow management practices and procedures that will enable it to meet case processing time standards and speedy trial requirements. The policies and procedures should be set forth in an overall plan for the jurisdiction. Portions of the plan that are directly relevant to the operations of a court or other organizational entity involved in criminal case processing should be incorporated into operations manuals or similar guides for use by practitioners.

History of the Standard

This Standard is new.

Related Standards

ABA Standards Relating to Trial Courts (1992 ed.), Standard 2.54

Commentary

This Standard focuses on the development of practices and procedures that will make it possible for jurisdictions to meet the speedy trial requirements outlined in Part II and to achieve the goals for timely resolution of cases called for in Part III. There is now a considerable amount of experience with introduction of modern caseflow management practices and procedures in a number of jurisdictions. For the most part, these efforts have been led by trial courts seeking to implement the case processing time standards such as those in Standard 2.52 of the *ABA Standards Relating to Trial Courts* and/or state-specific case processing time standards. The courts, as the neutral institutions ordinarily responsible for managing court calendars and scheduling trials and other court events, will necessarily have a critical leadership role in efforts to implement effective caseflow management practices. However, courts cannot achieve criminal caseflow excellence by themselves because much of what needs to be done to achieve timely resolution of cases is beyond the direct control of the court. This Standard makes it a jurisdiction's responsibility—rather than solely a court responsibility—to develop appropriate policies and procedures.

As a practical matter, many of the policies and procedures needed to achieve timely resolution of cases are ones that must be put in place by

entities other than the courts. The key concept here is collaborative development of an overall plan for effective case processing that will take account of the needs and concerns of all of the entities involved in criminal case processing.⁵⁵ Typically, these will include the police, jail officials, pretrial services programs, prosecutors' offices (sometimes more than one prosecutor's office in a jurisdiction, as in a "two-tier" system when the initial stages of felony charge cases are handled by one office and the post-indictment stages are handled by a different office), the defense bar, forensic science laboratories, probation departments, and victim support groups.

The final sentence of the Standard focuses on the practicalities of implementation. Policies are essential but policies alone are not sufficient to achieve timeliness in case processing. The agreed-upon policies should be incorporated into operations manuals and other types of guides typically used by line practitioners on a day-to-day basis, and reinforced by periodic training.

Standard 12-4.3 Jurisdictional plans for effective criminal caseflow management: essential elements

Elements of a plan for effective overall criminal caseflow management in a local jurisdiction should include:

- (a) rapid preparation and transmission, to the prosecutor, of good quality police incident/arrest reports;**
- (b) rapid retrieval of prior record information about the arrested person, using speedy and reliable identification and record retrieval technology;**
- (c) rapid preparation of pretrial investigation reports on arrested defendants by a pretrial services agency, and utilization of these reports by judicial officers in promptly setting release conditions for arrested persons;**

55. For an example of a systemic approach to improving criminal justice in a single urban area (Washington, D.C.), see The Council for Court Excellence and The Justice Management Institute, *A Roadmap to a Better Criminal Justice System: Practical Strategies to Increase D.C. Public Safety and Save Taxpayer Dollars* (Washington, D.C.: The Council for Court Excellence, April 2001). For discussion of strategies for establishing an effective collaborative approach to improving criminal justice operations in a local jurisdiction, see Robert C. Cushman, *Guidelines for Developing a Criminal Justice Coordinating Committee* (Washington, D.C.: National Institute of Corrections, January 2002).

(d) rapid turnaround of forensic laboratory test results, especially for the testing of suspected drugs seized pursuant to an arrest;

(e) effective early case screening and realistic charging by prosecutors;

(f) early appointment of defense counsel for eligible defendants; for other cases, court procedures that ensure prompt participation by counsel for the defendant;

(g) early provision of discovery, consistent with the provisions governing discovery set forth in the *ABA Criminal Justice Standards on Discovery*;

(h) early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case;

(i) early case scheduling conference conducted by the assigned judicial officer to:

(i) review the status of discovery and negotiations concerning possible non-trial disposition;

(ii) schedule motions; and

(iii) make any orders needed;

(j) case scheduling practices that use techniques of differentiated case management to facilitate expeditious disposition of simple cases, enable rapid identification of cases likely to require more attorney time and judge attention, and make good use of limited courtroom and lawyer preparation time;

(k) case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage of the case by the judge in consultation with the prosecutor and defense counsel;

(l) early filing and disposition of motions, including motions requiring evidentiary hearings;

(m) close monitoring of the size and age of pending caseloads, by the court and the prosecutor's office, to ensure that case processing times in individual cases do not exceed the requirements of the speedy trial rule and that case processing time standards are being met for the overall caseload;

(n) a policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the cases;

(o) procedures enabling resolution of all charges pending against a defendant, whether in the same case or in different cases and

whether in the same court or a different court of the state, provided that defense counsel and the prosecutor(s) who filed the charges agree to the consolidation of the cases; and

(p) elimination of existing case backlogs (i.e., cases pending longer than the established case processing time standards), following a backlog reduction plan developed collaboratively by the court, the prosecutor's office, the defense bar, and law enforcement and other criminal justice agencies involved in and affected by criminal case processing.

History of the Standard

This Standard is new.

Related Standards

ABA Standards for Criminal Justice, Prosecution Function (3d ed., 1993), Standards 3-1.2, 3-2.1, 3-2.5 through 3-2.9, 3-3.4, 3-3.8, 3-3.9, 3-4.1 and 3-4.2; Defense Function (3d ed., 1993), Standards 4-1.2(d), 4-3.6, 4-3.8, 4-4.1, 4-4.5, 4-5.1, 4-6.1 and 4-6.2; Providing Defense Services (3d ed., 1992), Standards 5-5.1, 5-6.1 and 5-6.2; Special Functions of the Trial Judge (3d ed., 2000), Standard 6-1.5; Pretrial Release (3d ed., 200_), Standards 10-1.10 and 10-4.1 through 10-4.3; Discovery, Standards (3d ed., 1996), 11-1.1, 11-1.2, 11-2.1, 11-2.2, and 11-4.1; and Pleas of Guilty (3d ed., 1999), Standards 14-1.3, 14-1.4, 14-3.1 through 14-3.3, 14-4.1

ABA Standards Relating to Trial Courts (1992 ed.), Standard 2.54

NDAAs National Prosecution Standards (2d ed., 1991), Standards 64.1, 65.1 and 65.2

Commentary

Consistent success in achieving fair and timely resolution of criminal cases is most likely to be achieved when there is a jurisdiction-wide commitment to a plan for achieving agreed-upon goals. There is no single "magic bullet" or "quick-cure" remedy that will produce success. Rather, what is needed is attention to the way the operations of all the different agencies and institutions that are involved in criminal case processing perform their functions. This Standard calls upon the key institutions and agencies involved in criminal case processing in local jurisdictions to develop plans for overall caseload management in the jurisdiction, from the inception of cases through to their disposition. The

elements of a jurisdictional plan that are set forth in this Standard draw upon the experience gained in jurisdictions that have sought to address problems of criminal case backlogs and delays and to establish effective practices and procedures. The following paragraphs discuss the rationales for specific elements of such a plan.

Standard 4.3(a) – Rapid preparation and transmission of good quality police reports

Most criminal cases begin with an arrest or with a summons issued by the police. In either case, at least one police officer will complete an “incident report” or similar document that describes the actions leading to the arrest or summons. This police report is the foundation for subsequent investigation and prosecution, and it should set forth facts that indicate the defendant has committed the offense charged. It is important that the report be completed accurately, legibly, and promptly, and that it be transmitted speedily to the office of the prosecutor who will handle at least the initial stages of the case. With modern communications technology, it is possible for the police to transmit the report instantaneously to the appropriate prosecutor’s office. The prosecutor is then in a position to review the matter, follow up with the police if necessary, and prepare the charges to be filed formally in court.

Standard 4.3(b) – Rapid retrieval of prior record information about the arrested person

Information about the prior criminal history of a defendant is important for many purposes in a criminal case, including the framing of initial charges, setting of conditions of pretrial release, consideration of possible diversion from criminal prosecution, and—in the case of persons with serious prior records—the possible enhancement of penalties. For purposes of making crucial early decisions about how to handle a case, it is important that prosecutors and defense counsel learn as rapidly as possible about a defendant’s prior criminal record.

The federal government, every state, and many local law enforcement agencies maintain extensive fingerprint-based criminal history repositories that contain information on the prior criminal records of persons previously arrested for crimes. When a suspect is arrested for an offense, it is now possible—using modern fingerprint technology and trained examiners—to obtain information about the person’s prior record very quickly. Even when a defendant is not fingerprinted (for example, when a summons is issued), it is possible to search criminal history records using other identifiers (e.g., name, date of birth) and to obtain relevant information that can be subjected to further verification.

Jurisdictions should utilize the modern data storage and transfer technology that is available to ensure that key decision-makers have the needed prior record information as rapidly as possible.

The function of obtaining prior record information can be done by any of several agencies: the law enforcement agency that makes the initial arrest, the sheriff's office or other entity responsible for housing arrested defendants prior to their initial court appearance, or a pretrial services agency. In many instances, the record check may be done by more than one agency, but coordination between agencies can conserve resources and produce more useful results. Ordinarily the record check should not require more than a few hours, and often it can be accomplished within minutes.

Standard 4.3(c) – Rapid preparation of pretrial investigation reports on arrested persons by a pretrial services agency; utilization of these reports by judicial officers in setting release conditions for arrested persons

The ABA Standards on *Pretrial Release* call for all jurisdictions to have a pretrial services agency.⁵⁶ As of 2004, more than 300 such agencies were in operation across the United States, functioning in jurisdictions varying widely in population size.⁵⁷ One primary function of pretrial services agencies is to collect information on the backgrounds and current circumstances of defendants who are arrested, for consideration by the court in making decisions concerning release or detention. Working within a very short timeframe between arrest and the initial appearance of a defendant, a well-functioning pretrial services agency typically conducts a brief interview of the defendant and completes a number of tasks including:

- checking the defendant's prior criminal record;
- ascertaining whether the defendant has any pending cases or is on probation or parole;
- verifying (when possible) information obtained from the defendant, through phone calls to references;

56. ABA Standards for Criminal Justice, *Pretrial Release* (3d ed., 200), Standards 10-1.1 and 10-4.2 (b).

57. See John Clark and D. Alan Henry, *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs* (Washington, D.C.: Bureau of Justice Assistance, 2003), pp. 5, 12. Clark and Henry found a total of 322 pretrial services programs in operation. *Id.* at p. 2.

- learning about the defendant's record of attendance at court proceedings and compliance with other conditions in any pending or recent cases;
- developing information about any special needs of the defendant that may require attention (e.g., language barriers, drug or alcohol abuse, mental illness);
- identifying options for monitoring and supervision that will respond to risks and needs posed by release of the defendant; and
- preparing a report for submission to the judicial officer who will preside at the defendant's first appearance in court.

The information collected and compiled by a good pretrial services agency can be very valuable to the judicial officer making decisions about release (including the setting of appropriate conditions of release) and detention at the inception of the case. The information can also be of considerable value to the prosecutor and the defense counsel in making initial strategic decisions about the case and in conducting initial discussions concerning possible non-trial resolution of the case.

Standard 4.3(d) – Rapid turnaround of forensic laboratory test results, especially for the testing of suspected drugs seized pursuant to an arrest

Accurate and reliable forensic testing is a critical component of criminal justice case processing, and great care must be taken to ensure the reliability and timeliness of laboratory processes. The kinds of forensic evidence that may be relevant to a criminal prosecution vary widely, and jurisdictions have organized their forensic laboratories in many different ways. Often these laboratories are under-funded and under-staffed, resulting in lengthy delays in analyses and in production of reports on tests conducted. Policymakers and practitioners concerned about fair, accurate, and timely resolution of criminal cases need to pay particular attention to the organization and processes used in these labs, including quality control standards and procedures for timely completion of lab tests.⁵⁸ Because crimes involving suspected drugs constitute a

58. See, e.g., the ABA resolution on *Crime Laboratories and Forensic Evidence* adopted at the 2004 Midyear Meeting. That resolution calls, *inter alia*, for certification of crime laboratories, medical examiner offices, and individual examiners; for procedures to be standardized and published in order to ensure the validity, reliability, and timeliness of forensic evidence; and for adequate funding of crime laboratories and medical examiner offices. For detailed discussion of issues in this area, see Paul C. Giannelli, "The Abuse of Scientific Evidence in Criminal Cases: The Need for Independent Crime Laboratories, 4 *Virginia Journal of Social Policy and Law* 439 (1997); David Bernstein, "Junk

very large portion of the criminal caseloads of many jurisdictions, particular attention should be paid to ways in which relevant tests of suspected substances—mainly for their weight and chemical composition—can be conducted expeditiously and reliably, thus avoiding delays in the high volume of cases involving drug offenses.

Standard 4.3(e) – Effective early case screening and realistic charging by prosecutors

The ABA *Prosecution Function* Standards are emphatic in stating that the decision to institute criminal proceedings should be vested in the prosecutor;⁵⁹ that prosecutors' offices should have standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted;⁶⁰ and that prosecutors should exercise sound discretion in making charging decisions.⁶¹ This Standard is consistent with those Standards and with *Prosecution Function* Standard 3-2.9, which calls for the prosecutors to avoid unnecessary delay and to organize the office so that all cases can be disposed of promptly.

As the commentary to *Prosecution Function* Standard 3-3.9 emphasizes, the charging decision is the heart of the prosecution function. It is important that a prosecutor's office function under guidelines that enable fair and consistent decision-making in deciding whether to bring charges and what specific charges to file. For the great majority of cases, the initial case screening decision is critical. It should be made on the basis of the best available information (thus the importance of good police reports and reliable information about the defendant's prior record) and in a fashion consistent with the guidelines in *Prosecution Function* Standard 3-3.9.

Standard 4.3(f) – Early appointment of defense counsel for eligible defendants; for other cases, court procedures that ensure prompt participation by counsel for the defendant

Science in the United States and the Commonwealth", 21 *Yale Journal of International Law* 123 (1996); Paul Giannelli and Myrna Raeder (eds), *Achieving Justice: Freeing the Innocent, Convicting the Guilty* (Washington, D.C.: American Bar Association Criminal Justice Section, 2006), Chapter 4 ("Forensic Evidence").

59. ABA Standards for Criminal Justice, *Prosecution Function* (3d ed., 1993), Standard 3-2.1.

60. *Id.*, Standard 3-3.4 (c).

61. *Id.*, Standard 3-3.9.

ABA policy calls for defense counsel to be provided for eligible defendants at the earliest possible time after arrest, detention, or request for assistance of counsel.⁶² As a practical matter, the earlier defense counsel knows what charges are being brought (or being considered), confers with the client, and begins learning about the circumstances of the case, the greater the likelihood of a fair and timely resolution of the case. Unless and until a defendant is represented by counsel, it is not possible to have fair and meaningful plea negotiations or discussions about possible diversion from conventional adjudication processes. In cases where a defendant is potentially eligible for appointment of counsel by the court, the decision about eligibility for such appointment should be made rapidly, and counsel appointed without delay. This ordinarily should be done before the defendant's first court appearance, so that the defendant is effectively represented at the time that key decisions about detention or release are made by a judicial officer.

Standard 4.3(g) - Early provision of discovery, consistent with the provisions governing discovery set forth in the ABA Criminal Justice Standards on Discovery

The ABA Criminal Justice Standards on *Discovery* are based on a fundamental premise that meaningful pretrial discovery promotes fairness and justice in criminal cases.⁶³ Part IV of those Standards, which deals with the timing and manner of discovery, provides for a continuing obligation on all parties to produce discoverable material to the other side. Standard 11-4.1(a) provides that jurisdictions should develop time limits for the provision of discovery, and the commentary to that Standard emphasizes that it is desirable for discovery to begin as early as practicable following the initiation of criminal proceedings.

As a practical matter, at least the initial police report and other discoverable material in the possession of the prosecution at the time of the defendant's initial court appearance should be disclosed to defense counsel at or before the first appearance. As additional materials (e.g., witness statements, results of forensic tests) become available to the prosecution, these too should be provided promptly to the defense. By

62. See, e.g., American Bar Association, *The Ten Principles of a Public Defense Delivery System* (2002); ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed., 1992), Standard 5-6.1.

63. ABA Standards for Criminal Justice, *Discovery* (3d ed., 1996), Standard 11-1.1 and accompanying commentary.

the same token, the defense should provide reciprocal discovery to the prosecution in a timely fashion.⁶⁴

Standard 4.3(h) – Early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case

When both sides know the basic evidence in the case and know the relevant facts about the defendant's prior record and other relevant circumstances (e.g., other pending charges, employment and family situation, substance abuse or mental health treatment needs,) it is possible to have meaningful negotiations. Such negotiations can lead to a dismissal of the case where it is clear that the facts do not warrant prosecution, a possible plea to reduced charges, disposition of other pending charges, agreed-upon recommendations concerning sentence of the defendant, entry into a diversion program, or other non-trial resolution of the case. The thrust of this Standard, like others in Standard 12-4.3, is toward structuring a jurisdiction's case processing system to enable rapid preparation of all relevant actors—the prosecutor, defense counsel, the defendant, and the judge—using relevant and reliable information. Early and on-going sharing of information about the evidence in a case enables informed and effective decision-making.

Standard 4.3(i) – Early case scheduling conference conducted by the assigned judicial officer

Because of the very wide range of criminal cases and the significant differences in the ways that courts are organized in different states, it is not practical to set forth a single formula for effectively scheduling cases. Case scheduling remains much more an art than a science, and there are innumerable approaches to assigning cases to judicial officers and scheduling court events. However, there is increasing evidence that, shortly after a case is assigned to a judicial officer for trial or other action, it is desirable for the judicial officer to hold a case scheduling conference at which the prosecutor, defense counsel, and the defendant are present.⁶⁵ The early conference provides an opportunity for the judge

64. *Id.* See also *Discovery Standards* (3d ed., 1996), 11-2.1, 11-2.2, and 11-4.1. There are, of course, some circumstances (for example, where there is justifiable fear of harm to a vulnerable victim or witness or to a confidential source) under which disclosure may be restricted by the court, upon a showing of good cause, through issuance of a protective order. *Id.*, Standard 11-6.5.

65. See, e.g., David C. Steelman *et al.*, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), pp. 48-49.

to review the status of discovery and of negotiations concerning possible non-trial disposition of the case, and to schedule any necessary motion hearings or other events.

The fact that such a conference is scheduled should serve to encourage completion of discovery, preparation of the case by both sides, and pre-conference negotiations between the prosecutor and the defense. If no agreement on non-trial resolution can be reached by the time of the conference, at least the remaining pretrial tasks can be identified, a schedule can be set for completing any further discovery and for conducting motion hearings, and a tentative trial date can be fixed.⁶⁶

Standard 4.3(j) – Case scheduling practices that use techniques of differentiated case management

As noted above in the commentary to Standards 12-1.3 and 12-3.4, techniques of differentiated case management have been shown to work well in a number of American jurisdictions. To use these techniques in criminal cases, the institutions involved in case processing—in particular, the courts and the prosecutor’s office—must be able to rapidly obtain essential information about all incoming cases and then use the information to assign cases to separate “tracks” that reflect varying degrees of case complexity. Key items of information needed for track assignment include the charge(s); the alleged facts upon which any charges are based (usually included in the charging instrument); the defendant’s prior record; number of co-defendants, if any; whether there are any pending cases or probation or parole violations; if there is a victim, the nature and extent of injuries to the victim; forensic tests needed, if any; possible need for experts; and characteristics of the defendant that could be relevant to disposition decisions, including any information about substance abuse or mental health problems. A number of jurisdictions have demonstrated that it is possible to obtain such information quickly and use it to assign cases to tracks that schedule relatively simple cases for expeditious resolution and allow considerably longer periods for cases that can be identified as complex at the outset of

66. The trial judge should not ordinarily participate in plea negotiations among the parties. However, when the parties have reached agreement on a potential plea or other non-trial resolution, it may be desirable to have the court presented with the proposed resolution and, if a sentence is involved, to indicate what sentence would be imposed. See ABA Standards for Criminal Justice, *Pleas of Guilty* (3d ed., 1999), Standard 14-3.3(c) and (d). The early case scheduling conference can sometimes be an appropriate occasion for such consultation.

the proceedings. Many cases will fall between these extremes and be assigned to a “standard” case track.⁶⁷

Standard 4.3(k) – Case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage by the judge in consultation with the prosecutor and defense counsel

This component of a jurisdictional plan is closely related to the conduct of an early case scheduling conference and the use of differentiated case management techniques. At an early conference, a judicial officer should be able to learn about the complexity of the case—and about any special needs such as forensic tests, contested motions, or need for competency examination—from the prosecutor and defense counsel. With this knowledge, and following policies for assigning cases to separate tracks based on their complexity, the judicial officer can set a schedule for case events that is tailored to the needs of the case and can make whatever other orders may be appropriate. Setting the schedule in consultation with the prosecutor and defense counsel heightens the likelihood that discovery will be completed promptly, and that—if not resolved through negotiation—the case will be brought to trial in a timely fashion.

Standard 4.3(l) – Early filing and disposition of motions, including motions requiring contested evidentiary hearings

When pretrial motions are resolved at an early stage of criminal cases, the result is a narrowing of the issues in dispute and increased likelihood of relatively expeditious non-trial case resolution. As cases are resolved early, fewer of them are set for trial, trial calendars are shorter and more manageable, and trials are far more likely to take place on the date originally scheduled.⁶⁸

67. See the descriptions of differentiated case processing tracks described in the references cited in the commentary to Standards 12-1.3 and 12-3.4, *supra*.

68. The interrelationship of early resolution of motions and the capacity to set firm trial dates, and the strong correlation between these two variables and relatively expeditious case processing times, are supported by empirical research. See, John A. Goerdts *et al.*, *Examining Court Delay* (Williamsburg: National Center for State Courts, 1989), p. 88; also Goerdts *et al.*, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg: National Center for State Courts, 1991), p. 20.

Standard 4.3(m) – Close monitoring of the size and age of the pending caseload, by the court and the prosecutor’s office

With modern computerized management information systems, it is possible for both trial courts and prosecutors’ offices to have accurate and timely information on the size, composition, and age of pending caseloads, and to closely track the progress of individual cases. However, while the information is (or can be) readily available, the key to effective tracking of individual cases and the management of overall caseloads is having trained personnel who can use the information to identify potential problems and take whatever action may be necessary.

For purposes of complying with speedy trial statutes and rules, it is important to be able to have computerized systems programmed to exclude time when appropriate, and to enable rapid calculation of the allowable time remaining before trial. For purposes of managing overall caseloads in order to meet case processing time standards, it is important to have information on overall system performance in relation to the goals that are set. For example, if one of the goals of a jurisdiction is to complete all non-capital felony cases within a period of 120 days after arrest, the jurisdiction should have management information reports that show the age of all pending cases and that specifically highlight the individual cases pending more than a specific period such as 90 days.

While having the information is important, it is even more important that the information actually be used. This requires both trained personnel who have the ability to analyze the data and institutional leaders who will take action to remedy problems—with individual cases or with respect to the overall caseload—when they are identified.

Standard 4.3(n) – A policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary

Policies with respect to the granting of continuances in criminal cases vary widely across jurisdictions. In some jurisdictions, it is common for continuances to be granted routinely at the request of either the prosecution or the defense if the other party consents. In others, the court maintains control over the management of the calendar and ensures that continuances are granted only when clearly necessary. The latter policy, which has been in ABA Standards for over thirty years, is clearly preferable: it tends to create an expectation that events will take place when scheduled, encourage prompt completion of pretrial preparations, and contributes to a culture that is consistent with the public interest in

timely case resolution.⁶⁹ This component of a jurisdictional plan is one for which the court has primary responsibility, but effective implementation of a policy aimed at limiting continuances will require buy-in and cooperation from both the prosecution and the defense bar.

Standard 4.3(o) – Procedures to enable the resolution of all charges pending against a defendant in appropriate cases

It is not uncommon for a defendant arrested for a single offense to have other pending cases, sometimes including charges of probation or parole violation as well as other crimes. It is often in the interest of all parties—the defendant as well as the prosecutors’ offices or other agencies that have filed the various charges—to resolve all of the charges as part of a single “package” of dispositions that takes account of the range and seriousness of the offenses. This Standard calls on the agencies that are responsible for bringing charges to work cooperatively to develop ways of learning about the pending cases and resolving them through a consolidated proceeding. The availability of computer technology that can facilitate the identification of other pending cases can be very helpful for enabling consolidation and rapid resolution of cases that otherwise might linger for many months.

Standard 4.3(p) – Elimination of existing backlogs

On a year-to-year basis, most jurisdictions tend to have a total number of criminal case dispositions that is roughly similar to the number of new filings. In jurisdictions that have a serious delay problem, however, a five-to-ten year comparison of filings and dispositions is likely to show an annual number of dispositions that is consistently less than the number of filings. The result is the build-up, over a number of years, of a serious backlog—i.e., a large number of cases that cannot be resolved in an acceptable period of time. Formulation of a plan to eliminate a backlog of old pending cases is a key component of any plan to improve overall caseflow management in a jurisdiction.

A case backlog must be addressed at the outset of any jurisdictional initiative to improve overall caseflow management. Unless and until the backlog is eliminated it will act like a cancer in the system, making it

69. This approach to ruling on requests for continuances was initially set forth in Standard 1.3 of the First Edition of the *Speedy Trial Standards* and was continued unchanged in Standard 12-1.3 of the Second Edition. Similar provisions have also been included in successive editions of the *ABA Standards Relating to Trial Courts* (see, e.g., Standard 2.51(g) [1992 ed.]).

impossible to achieve goals for timely resolution of cases.⁷⁰ To eliminate the backlog, a jurisdiction will have to dispose of more cases than it takes in for an extended period of time. Depending on the size of the backlog and the time period in which the jurisdiction seeks to eliminate it, this is likely to require an infusion of *temporary* additional resources—at a minimum, judges, court staff, prosecutors, and defense counsel. However, unless there is a major long-term upward trend in the criminal case workload of the jurisdiction, additional resources should not be required on a permanent basis.

In planning a backlog reduction program, the court should have a leading role, but it will be important for jurisdictions to take a collaborative approach in developing the plan. All of the entities involved in criminal case processing are likely to have to make some changes in practices and procedures in order to enable the program to succeed, and the necessity to resolve more than the usual number of cases over an extended period of time means that some reallocation of resources will probably be necessary. Collaborative planning will increase the likelihood of success for the program and is consistent with the overall approach of these Standards.

Standard 12-4.4 Acquisition and use of information for case processing

Jurisdictions should seek to use modern information technology to enable the courts and all of the other organizations involved in the criminal caseload process to rapidly gather, store, disseminate, and retrieve information about cases, and should structure the flow of information to:

(a) enable the prosecution and defense to obtain reliable information about the charge, the evidence, and the defendant as rapidly as possible for purposes of case preparation, negotiation, and trial; and

(b) enable the court to have reliable information upon which to make decisions concerning the pretrial custody or release status of the defendant at the time of initial appearance and, thereafter, to

70. See ABA *Standards Relating to Trial Courts* (1992 ed.), Standard 2.54(c) and accompanying commentary; also Barry Mahoney et al., *Changing Times in Trial Courts* (Williamsburg: National Center for State Courts, 1988), p. 204.

make informed decisions concerning possible diversion, sentence, or other disposition.

History of the Standard

This Standard is new.

Related Standards

ABA Standards of Court Organization (1990 ed., revised in 2005), Standard 1.61 (a) and 1.62

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.54 and 2.82

ABA Standards for Criminal Justice, *Pretrial Release* (3d ed., 200_), Standards 10-1.10, 4.2, 4.3

Commentary

In the more than two decades since the Second Edition of the *Speedy Trial* Standards was published, there has been a revolution in information technology. It is now possible to obtain, store, retrieve, and disseminate very large quantities of information about individuals and cases virtually instantaneously. The technology revolution holds enormous promise for dramatic improvement in the accuracy, reliability, and timeliness of criminal case processing. This Standard calls upon jurisdictions to incorporate relevant modern technologies into their criminal case processing practices, from the point of initial arrest or summons issuance through to the conclusion of cases. In doing so, it will be necessary to bring together expertise in information technology plus detailed knowledge about the workings of the agencies involved in criminal case processing, notably including law enforcement agencies and forensic laboratories as well as courts, prosecutors' offices, and defender offices.

Standard 4.4(a) – Information needed by prosecutors and defense counsel for pretrial preparation, negotiation, and trial

With computerized police report preparation and fingerprint record checks, and with electronic transmission of the contents of police reports, prior record information, and forensic lab tests, it is possible for prosecutors to obtain basic information about a case very rapidly. Once an electronic file exists, it is also possible for prosecutors to transmit the information very rapidly to defense counsel as part of routine disclosure/discovery practices, incorporating appropriate security

protections when necessary. Similarly, information subject to reciprocal disclosure/discovery can easily be transmitted by defense counsel to the prosecutor. The availability of information and the opportunities for rapid communication make it possible to have productive negotiations—and to narrow issues and resolve minor disputes—far more rapidly than in earlier eras.

Standard 4.4(b) – Information for decision-making by the court

At the first court appearance of a defendant following arrest, important decisions about the defendant’s future status—in particular, whether the defendant will be detained or released and, if released, under what conditions—must be made by the presiding judicial officer. The decisions should be made on the basis of the most complete and reliable information it is possible to obtain about the defendant’s background, prior criminal record, community ties, problems of substance abuse or mental illness, language barriers, and other factors that may be relevant to the decision.

Initial decisions about custody status may need to be reviewed later in the process. It may also be necessary for the court to make decisions about possible entry of the defendant into a diversion program, establish conditions of probation, or impose a prison sentence. In all of these instances, the availability of timely and accurate information is important. The potential for obtaining and disseminating such information on a timely basis clearly exists, and should be capitalized upon by every jurisdiction.

Having timely and reliable information about individual cases is an essential component of fair and timely adjudication. A sound base of individual case information also provides the foundation for overall caseload management information and for analysis and action to manage caseloads effectively.

Standard 12-4.5 Court responsibility for management of calendars and caseloads

(a) Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. The court should exercise responsibility for case scheduling and for the expeditious resolution of all cases beginning at the time of first appearance, taking account of information relevant to case scheduling that may be provided by both the prosecutor and defense counsel. Continuances should be granted only by a judicial officer,

on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.

(b) The court should establish mechanisms and procedures to promote the resolution of all cases within the time periods established by applicable management goals and without exceeding the time limits of the speedy trial rule or statute. Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.

History of the Standard

This Standard incorporates and expands upon portions of Part I of the previous editions of the *Speedy Trial* Standards, especially former Standards 12-1.2 and 12-1.3.

Related Standards

ABA Standards for Criminal Justice, Prosecution Function (3d ed., 1993), Standard 3-5.1

ABA Standards Relating to Trial Courts (1992 ed.), Standards 2.31, 2.50 and 2.51

NCCUSL Uniform Rules of Criminal Procedure (1987), Rule 721

Commentary

Both the First and Second Editions of the *Speedy Trial* Standards emphasized the importance of court control over trial calendars. This Standard continues and expands upon that emphasis, making it clear in the first two sentences of new Standard 12-4.5(a) that the court should take control of the calendaring process at the time of the defendant's first court appearance and should continue to exercise responsibility for case scheduling throughout the duration of the case. The principle of court

supervision and control of the movement of all cases, from the inception of the case through final disposition, is supported by research on caseflow management and is a key component of the *ABA Standards Relating to Trial Courts*.⁷¹ The second sentence of the Standard reinforces the concept of consultation with the parties, calling for courts to take account of information relevant to case scheduling that can be provided by both the prosecutor and defense counsel.

The two previous editions of the *Speedy Trial Standards* also emphasized that courts should grant continuances “only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case.”⁷² This Standard has the same basic thrust, making it clear that it is the responsibility of the court to make an independent determination as to whether there is in fact good cause for a continuance and to grant a continuance only for the time required under the circumstances. The Standard also adds two additional points. First, it emphasizes that a continuance should be granted only by a judicial officer. Second, it includes a requirement that, if the granting of a request for a continuance will have the effect of extending the speedy trial time period, the judge should state the new speedy trial time limit date on the record and confirm the date with both the prosecution and defense. Following this practice should help minimize confusion and mistakes concerning the time allowed for bringing the defendant to trial in accordance with the jurisdiction’s speedy trial rule or statute.

Standard 12-4.5 (b) calls on the trial court to establish caseflow management practices and procedures that will enable resolution of cases within the applicable goals set by the jurisdiction in accordance with Standard 12-4.1 as well as in conformance with the speedy trial time limits established by statute or rule. This Standard is intended to provide general guidance for the management of criminal caseloads. Consistent with Standard 12-3.3 and 12-4.3 (m), it stresses the importance of having accurate and timely management reports that provide information on the age and status of pending cases. The reports should be reviewed regularly by the judge who has overall responsibility for criminal caseload management in the court, with a view to identifying potential problem cases and taking necessary action. The pending caseload

71. See David C. Steelman et al., *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg: National Center for State Courts, 2000), p. 3; *ABA Standards Relating to Trial Courts* (1992 ed.), Standards 2.50 and 2.51.

72. See Second Edition Standard 12-1.3 and accompanying commentary.

reports should also be made available to the leaders of other entities involved in criminal justice in the jurisdiction, to help facilitate collaborative planning and problem-solving.

