



## Speedy Trial

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Criminal Justice Section Standards

## Speedy Trial

### Speedy Trial

#### 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 of 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.

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**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.

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**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.

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#### **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.

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#### **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 concerning case scheduling, and that the jurisdiction's speedy trial requirements and standards for timely resolution can be met.

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### **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 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.

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### **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.

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### **Standard 12-2.3   Excluded periods**

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

(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.

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**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).

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**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.

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**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.

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**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.

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### **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.

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### **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 (i) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (ii) 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.

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### **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.

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### **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.

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#### **PART IV.**

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

#### **Standard 12-4.1      Operational goals to guide criminal caseflow**

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 caseflow 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 caseflow management.

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#### **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.

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**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:
  - (1) review the status of discovery and negotiations concerning possible non-trial disposition;
  - (2) schedule motions; and
  - (3) 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;

(o) 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;

(p) 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

(q) 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.

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#### **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 caseflow 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.

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#### **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.

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