

Please use the Template Order attached here. This Template Order differs from the template order provided by Judge Waddoups, as it may be used for a motion brought under any subsection of 18 U.S.C. 3161(h), and includes findings and conclusions that are consistent with and incorporate the suggestions discussed below.

Motions to Continue in Criminal Cases:

A motion to continue in a criminal case must comply with [DUCrimR 12-1\(h\)](#) by identifying the information needed to adequately conduct the requisite inquiry under [United States v. Toombs, 574 F.3d 1262 \(10th Cir. 2009\)](#).

Note that an "ends of justice" exclusion is disfavored. "Th[e] [ends-of-justice] exception to the otherwise precise requirements of the Act was meant to be a rarely used tool for those cases demanding more flexible treatment." [Toombs at 1269](#). Find another statutory basis in the checklist below.

The following suggestions for motions relate to the identified subsections of [DUCrimR 12-1\(h\)](#)

(1) The motion must state the dates on which the time limits of the Speedy Trial Act activated and will expire, as well as the amount of time elapsed under the defendant's speedy trial computation (*e.g.*, "the defendant was arrested April 1, 2011, an indictment or information is due within 30 days, by May 1, 2011, 10 days have elapsed under the defendant's speedy trial computation as of the filing of this motion" or "the defendant appeared before a United States Magistrate Judge on May 1, 2011, a jury trial is to commence within 70 days, by July 10, 2011, 30 days have elapsed under the defendant's speedy trial computation as of the filing of this motion").

(4) The motion must cite to the specific statutory provision, or provisions, under which the requested extension or continuance is excludable under the Speedy Trial Act.

(5) The motion must clearly state the specific reasons for the requested extension or continuance, including factual assertions demonstrating the diligence of counsel and explanation why the act cannot be completed or the event cannot occur within the originally allotted time (*e.g.*, "trial is scheduled to begin in 30 days; counsel was appointed to the case last week, has spoken with the defendant regarding the case and has discussed the potential for resolving the case with the government's counsel; counsel will not have sufficient time to advise the defendant regarding the government's plea offer, review all discovery, and adequately prepare for the upcoming trial date as a result of her/his recent appointment to the case").

(6) The motion must relate the *reasons* for extension to the *amount* of additional time requested (*e.g.*, "a 30-day continuance is necessary, as not all discovery has been provided, the discovery is expected to be received within one week, counsel will need one week to review the discovery once it is received and to interview witnesses, and will need another two weeks to adequately prepare for the trial")

(8) If the motion is filed by defense counsel, the motion must clearly state that counsel has conferred with the defendant about the motion and that the defendant:

- (a) was advised by defense counsel of the reasons for seeking an extension or continuance;
- (b) understands that the time requested in the extension or continuance may be excluded from any calculation of time under the Speedy Trial Act; and
- (c) with this understanding and knowledge, agrees to or objects to the filing of the motion.

(9) If the extension or continuance will affect other deadlines, those effects must be clearly identified (*e.g.*, “the 30-day continuance sought will not change any other deadlines in the case other than the date of trial” or “the 30-day extension of the discovery deadline will extend the plea and motion deadlines by two weeks, as well as, the date of trial”).

(10) The motion must state the precise period of extension or continuance and other relief requested.

A motion under the Speedy Trial Act is not required to exclude the time between the scheduling of a change of plea hearing and the date of the change of plea hearing. A defendant’s request to change his plea constitutes a pretrial motion that automatically triggers an exclusion of time under [18 U.S.C. § 3161\(h\)\(1\)\(D\)](#). See [United States v. Loughrin](#), 710 F.3d 1111, 1120 (10th Cir. 2013).

Walking through the following checklist as you prepare a motion for extension of time or continuance under the Speedy Trial Act will ensure the motion complies with the pleading requirements of [DUCrimR 12-1\(h\)](#) and includes all information needed for the requisite inquiry under [United States v. Toombs](#), 574 F.3d 1262 (10th Cir. 2009):

CHECKLIST FOR SPEEDY TRIAL ACT (STA) MOTIONS

• **Ensuring the STA Motion Asserts Sufficient Facts—Compliance with [DUCrimR 12-1\(h\)](#):**

(Facts relating to all of the following must be included in the STA motion)

- _____ **(h) (1)** identifies event and date activating STA clock (it is preferred to include the amount of time elapsed from STA clock).
- _____ **(h) (2)** identifies date of event to occur in absence of extension or continuance.
- _____ **(h) (3)** identifies all prior STA motions, their disposition, and whether time was excluded under the STA.
- _____ **(h) (4)** states whether the extension or continuance is excludable under the STA, including citation to specific subsection(s) of 18 U.S.C. § 3161(h).
- _____ **(h) (5)** states specific reason(s) for the extension or continuance, including why the act cannot be performed in the allotted time (avoids conclusory statement(s) and includes statement(s) regarding counsel’s diligence).
 - (h) (5) (A)** If the reason is a scheduling conflict with another case:
 - _____ **(i)** identifies the case by caption, case number, and court;
 - _____ **(ii)** describes action(s) taken in the other case to request a continuance or deferment;
 - _____ **(iii)** states reason(s) why the other case should have priority;
 - _____ **(iv)** states reason(s) why associate counsel cannot handle one of the cases, including why continuity of counsel is important to the cases; AND
 - _____ **(v)** states any other relevant circumstances.

(h) (5) (B) If the reason is the complexity of the case, including voluminous discovery:

_____ states specific facts demonstrating case's complexity.

(h) (5) (C) If the reason is due to personal hardship of defendant or counsel:

_____ states specific nature of hardship and when hardship might be resolved.

_____ **(h) (6)** explains how the reason(s) offered justify the length of the requested extension or continuance (avoids conclusory explanation(s)).

_____ **(h) (7)** states whether opposing counsel agrees with or objects to the requested extension or continuance.

_____ **(h) (8)** indicates whether defendant agrees with or objects to the requested extension or continuance (it is preferred that defendant countersign the motion and that the motion attach an affidavit of defendant stating that defendant (i) was advised by counsel regarding the motion, (ii) understands time may be excluded under the STA, and (iii) agrees to the motion's filing).

_____ **(h) (9)** states impact on the scheduled trial or other deadlines.

_____ **(h) (10)** states precise relief requested.

• **Proper Exclusions Under the STA—[18 U.S.C. § 3161\(h\)](#):**

(One or more of the following must be present to exclude time under the STA)

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

_____ **(A)** any examinations to determine the defendant's mental competency or physical capacity;

_____ **(B)** a trial on other charges against the defendant;

_____ **(C)** any interlocutory appeal;

_____ **(D)** any pretrial motion (from the filing through a hearing or other prompt disposition of the motion);

_____ **(E)** any proceeding relating to the transfer of a case or the removal of any defendant from another district under the FED. R. CRIM. P.;

_____ **(F)** transportation of any defendant from another district, or to and from places of examination or hospitalization (however time in excess of 10 days from the order and the defendant's arrival is presumed unreasonable);

_____ **(G)** consideration by the court of a proposed plea agreement; OR

_____ **(H)** any period reasonably attributable to any proceeding concerning the defendant that is actually under advisement by the court (not to exceed 30 days);

_____ **(h) (2)** Any period of delay during which prosecution is deferred for the purpose of allowing the defendant to demonstrate his good conduct (must be pursuant to written agreement between the Government and the defendant, and approved by the court).

- _____ (h) (3) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.
- _____ (h) (4) Any period of delay resulting from defendant's mental incompetence or being physically unable to stand trial.
- _____ (h) (5) Any period of delay from the date a charge was dismissed to the date the time limitation would commence to run as to a subsequent charge (must be same offense or any offense required to be join with the original charge) had there been no previous charge.
- _____ (h) (6) A reasonable period of delay when a co-defendant's time for trial has not run and no motion for severance has been granted.
- _____ (h) (7) Any period of delay resulting from a continuance granted on the basis of the ends of justice outweighing the best interest of the public and the defendant in a speedy trial.
- _____ (h) (8) Any period of delay as a result of an order on an official request for evidence that reasonably appears to be in a foreign country (not to exceed 1 year).

• **Considerations for an "Ends of Justice" Determination—[18 U.S.C. § 3161\(h\)\(7\)\(B\)](#):**
(One or more of the following must be present for an "ends of justice" determination)

- _____ (B) (i) Failure to grant a continuance would be likely to make proceeding impossible, or result in a miscarriage of justice.
- _____ (B) (ii) Case is so unusual or complex that it is unreasonable to expect adequate preparation for pretrial proceedings or trial within the established time limits.
 Because of:
 - _____ number of defendants;
 - _____ nature of the prosecution; AND/OR
 - _____ existence of novel questions of fact or law.
- _____ (B) (iii) In a case in which arrest precedes indictment, the delay in the indictment's filing was caused by:
 - _____ the arrest occurring at a time that makes it unreasonable to expect return and filing of the indictment within the established time limits; AND/OR
 - _____ the facts that the grand jury must base its determination on being unusual or complex.
- _____ (B) (iv) In a case that is not so unusual or so complex, the failure to grant a continuance would:
 - _____ deny the defendant reasonable time to obtain counsel;
 - _____ unreasonably deny the defendant or the Government continuity of counsel; AND/OR
 - _____ deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.