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M&C Fwd: Letter from Chief Justice F. Philip Carbullido

1 message

Speaker's Office <speaker@guamlegislature.org> Fri, Nov 6, 2020 at 2:15 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

11/06/20	1:01 PM	11/06/20	Letters from Chief Justice F. Philip Carbullido dated October 29, 2020 and November 6, 2020.*	Judiciary of Guam	35GL-20-2415

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

---------- Forwarded message ---------
From: **Petrina M. Ula** <pula@guamsupremecourt.com>
Date: Fri, Nov 6, 2020 at 1:01 PM
Subject: Letter from Chief Justice F. Philip Carbullido
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Cc: Speaker's Office <speaker@guamlegislature.org>, Honorable F. Philip Carbullido <fpcarbullido@guamsupremecourt.com>

Hafa Adai, Senator Terlaje,

Please see the attached letter with enclosures from Chief Justice F. Philip Carbullido. I respectfully request a reply to confirm receipt of the letter and attached documents at your earliest convenience. Please let me know if you have difficulty opening the attachments.

Warmest Regards,

Petrina "Trina" Ula

Chamber Clerk to the ***Honorable F. Philip Carbullido, Chief Justice of Guam***

Supreme Court of Guam

Guam Judicial Center

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9 attachments

- **Testimony Chief Justice F. Philip Carbullido 10.28.20.pdf** 1090K
- **Supplemental Testimony Chief Justice F. Philip Carbullido 11.6.20.pdf** 4773K
- **JOG technical edits - Bill No. 408-35 (COR) - Magistrate expansion.pdf** 924K
- **Jury size research - Bill No. 409-35 (COR).pdf** 161K
- **Peremptory challenge research - Bill No. 410-35 (COR).pdf** 173K

JOG technical edits - Bill No. 409-35 (COR) - Increase use of 6-member juries.pdf
932K

JOG technical edits - Bill No. 410-35 (COR) - Peremptory Challenges.pdf
884K

JOG technical edits - Bill No. 411-35 (COR) - Speedy Trial.pdf
928K

Speedy trial research - Bill No. 411-35 (COR).pdf
244K

JUDICIARY OF GUAM

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
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HON. F. PHILIP CARBULLIDO
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA III
PRESIDING JUDGE

KRISTINA L. BAIRD
ADMINISTRATOR OF THE COURTS

October 28, 2020

The Honorable Therese M. Terlaje
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina'Trentai Cinco Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

RE: Testimony on Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR)

Håfa Adai, Chairperson Terlaje,

Thank you for the opportunity to present testimony on behalf of the Judiciary of Guam on Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR). The Judiciary of Guam has spent the last few months discussing and drafting the proposed legislation that is before this honorable body for public hearing today. These proposals seek to amend various statutory requirements governing judicial proceedings to allow the trial courts to efficiently and expeditiously resolve its backlog of cases. The proposals were approved for transmittal by the Judicial Council at its August 20, 2020 regular meeting and were transmitted last month to your office. I wish to extend my sincere gratitude, Senator Terlaje, for your prompt action in sponsoring these bills and scheduling them for public hearing.

Since March 2020, in response to the COVID-19 global pandemic, Governor Lou Leon Guerrero has declared Guam to be in a state of public health emergency. Since then, the Governor has issued a series of executive orders that have suspended non-essential government operations for the better part of the past seven months. In parity with these executive orders and in recognition of the need to stem the spread of the virus, the Supreme Court of Guam has issued administrative orders that have suspended non-essential court operations—including civil and criminal jury trials and grand jury proceedings—for all but a few weeks in the last seven months.

The suspension of non-essential court operations has resulted in a staggering and unprecedented backlog of cases—a backlog which continues to grow each day and threatens the statutory right of all criminal defendants to a speedy jury trial. Moreover, the current size limitations of Judiciary facilities constrain the court's ability to safely and expeditiously recommence jury selections and jury trials, given social distancing

mandates and the legitimate health concerns of criminal defendants, attorneys, court employees, and those called to jury service. These constraints will cause further delay in the court's ability to tackle its backlog and will have lasting effects on the delivery of justice in all cases before the court.

Recognizing early on that COVID-19 was not likely to go away anytime soon, the Judiciary wasted no time in springing into action. We procured software and equipment to outfit our judges with the tools necessary for remote hearings. With Zoom licenses, laptops and webcams in hand, our judicial officers learned in a few short weeks how to preside over virtual courtrooms. But the nature of certain proceedings and the limited access to technology for many individuals who appear before the courts meant that virtual courtrooms were not enough. So, we worked around the clock to retrofit our San Ramon building into a temporary, high-capacity courtroom where we could safely proceed with jury trials. Unfortunately, having just one space large enough for jury trials means that our seven judges must wait in line as trials are held one at time. This will barely make a dent in the growing backlog of cases awaiting trial.

Therefore, the Judiciary believes certain statutory amendments are necessary to make a meaningful impact on the court's ability to address the current backlog of cases and prevent this backlog from continuing to grow at its current rate. These proposed amendments aim to strike a necessary compromise between the rights of criminal defendants to a speedy public trial and the capabilities of the judicial system to carry out this duty during and in the aftermath of the COVID-19 pandemic.

Bill No. 408-35 (COR) seeks a permanent amendment to 7 GCA § 4401(c) to expand the powers of the magistrates to allow them to perform additional duties—such as disposing of pretrial matters, issuing search warrants and warrants of arrest, and performing marriages—to ease the workload of the Superior Court judges so they can focus on dispositive matters. The bill also seeks a permanent amendment to 8 GCA § 40.50 to authorize magistrates to modify bail conditions.

Bill No. 409-35 (COR) seeks a temporary amendment to 8 GCA § 85.15 to increase the use of six-member juries except in cases where the defendant is charged with a first-degree or second-degree felony. This proposal—which includes a two-year sunset provision—would allow for smaller juries in lower-stakes felony cases. This would allow the court to reduce the number of potential jurors called for jury service, expedite the jury selection process, and ultimately result in a timelier resolution of criminal cases.

Bill No. 410-35 (COR) seeks a temporary amendment to 8 GCA § 85.30 to reduce the number of peremptory challenges available in criminal cases. The current number of peremptory challenges available to both sides in criminal cases greatly lengthens the jury selection process. Like the proposed amendment concerning jury size, allowing fewer peremptory challenges for a two-year period would expedite the jury selection process and reduce the number of potential jurors who must report for jury service.

And finally, Bill No. 411-35 (COR) seeks a permanent amendment to 8 GCA § 80.60 to increase the speedy trial time limits in criminal cases. Guam's current speedy trial time limits of 45 days for in-custody defendants and 60 days for not-in-custody defendants are among the shorter time limits in the nation. The proposed amendment would increase the speedy trial time limits for in-custody misdemeanor defendants to 60 days and for not-in-custody misdemeanor defendants to 75 days. The proposed amendment would also increase the speedy trial time limits for in-custody felony defendants to 90 days and for not-in-custody felony defendants to 180 days. These proposed time limits are based on the American Bar Association (ABA) Standards on Speedy Trial and Timely Resolution of Criminal Cases (3d ed. 2006) and are similar to the statutory speedy trial time limits afforded to criminal defendants in many U.S. jurisdictions.

The current surge in confirmed COVID-19 cases has put a heavy strain on the island's healthcare system and has resulted in an alarming and tragic rise in the virus's death toll. Given the likely timeframe for a vaccine, it has become increasingly clear that we still have a long road ahead in the battle against this virus. As I shared in my State of the Judiciary address in June, there is a myriad of issues flowing from this pandemic that have fallen and will continue to fall on the doorsteps of the court. Though the focus of today's bills is on our criminal backlog, the impact of this pandemic on the court's ability to safely execute its mandates extends to all case types and affects the thousands of residents who look to the courts to resolve their legal disputes. The Judiciary trusts that our sister branch shares our interest in ensuring the efficient and expeditious delivery of justice services to the people of Guam during these unprecedented and trying times.

Si Yu'os Ma'åse for your time and attention.

Senseramente,

F. PHILIP CARBULLIDO
Chief Justice of Guam

JUDICIARY OF GUAM

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
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HON. F. PHILIP CARBULLIDO
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA III
PRESIDING JUDGE

KRISTINA L. BAIRD
ADMINISTRATOR OF THE COURTS

November 6, 2020

The Honorable Therese M. Terlaje
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina'Trentai Cinco Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

RE: Supplemental Testimony on Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR)

Håfa Adai, Chairperson Terlaje,

Thank you for the opportunity to present testimony on behalf of the Judiciary of Guam at the October 28, 2020 public hearing on Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR). I am submitting today the written version of my original testimony read into the record by Administrator of the Courts Kristina Baird at last week's hearing. In addition to that testimony, I submit the following supplemental testimony in response to some of the many concerns raised by hearing participants.

As mentioned in my prior testimony, the Judiciary of Guam spent several months discussing and drafting the statutory amendments proposed in Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR). The proposals resulted from the collective effort of ten judicial officers who discussed at length how best to address the growing case backlog that has arisen during the COVID-19 pandemic, balancing the interests of criminal defendants with the court's ability to safely resume in-person proceedings in times of social distancing mandates and rising COVID-19 positivity rates.

The Judiciary commends the defense bar for its zealous advocacy on behalf of their clients during last week's public hearing. We expected our proposed amendments would be met with opposition by criminal defense attorneys, and we respect and appreciate their views on these issues. However, I wish to point out that, as neutral decisionmakers, it is not our intention through these proposals to trample on defendants' rights. But I believe we can all agree that since the start of this global pandemic, we all are operating under very different circumstances than usual. Certain measures must be taken to ensure the safety of all those who come before the courts—defendants, attorneys, witnesses, and jurors alike. And the interests of criminal defendants must be balanced with the interest of the public in seeing those charged with crimes are prosecuted and

Doc. No. 35GL-20-2415.*

adjudicated guilty or not guilty rather than simply released because of courthouse size limitations.

The Judiciary of Guam is not alone in the challenges it faces because of the COVID-19 pandemic. Courts across the country have had to find innovative ways to deal with rising backlogs stemming from periodic shutdowns, social distancing and gathering restrictions, and capacity limitations. Some have implemented measures like those proposed in Bill Nos. 408-35 (COR), 409-35 (COR), 410-35 (COR), and 411-35 (COR). For example, in Arizona, the usual number of six peremptory challenges on each side for non-death penalty cases has been temporarily reduced by the Arizona Supreme Court to two on each side for felony cases and one on each side for misdemeanor cases. The Idaho Supreme Court has temporarily reduced the number of peremptory challenges in life imprisonment cases from ten to six, in other non-death penalty felony cases from six to three, and in misdemeanor cases from four to two. And the Supreme Judicial Court of Massachusetts has authorized six-member juries with the consent of the defendant.

In an ideal world, the Judiciary would have unlimited resources to secure larger, temporary facilities in which to hold in-person hearings, and proceedings such as jury selection would be held virtually. But the reality is that even in a pre-pandemic world, our resources were scarce; our pandemic budget is even bleaker. And many Guam residents have limited or no access to electronic devices or reliable internet necessary for participation in remote proceedings. This has been a challenge even when scheduling remote hearings involving only a handful of individuals. A remote jury selection involving 60-80 potential jurors is just not feasible.

Some participants at last week's public hearing questioned how certain proposed amendments, such as reducing the number of peremptory challenges, would reduce the court's backlog. My response is that jury size and the number of available peremptory challenges are a major consideration in the court's ability to safely resume in-person proceedings. Judges factor the size of the jury and the number of peremptory challenges available to each side when determining how many potential jurors to summon for jury selection for any given case. The more individuals called, the longer the overall jury selection process takes. This was true even before the pandemic; social distancing measures will further delay the process. Reductions in jury size and peremptory challenges would result in speedier and safer jury selection proceedings, which would result in a more expedient reduction in the court's backlog.

One public hearing participant raised that the Judiciary's speedy trial proposal did not exactly match the American Bar Association (ABA) Standards on Speedy Trial and Timely Resolution of Criminal Cases because the ABA standards start the speedy trial clock for in-custody defendants from the defendant's first appearance in court after the filing of a charging instrument, whereas the time limits in 8 GCA § 80.60 start from arraignment. The Judiciary acknowledges this difference and is open to an amendment that would either start the speedy trial clock from the defendant's first appearance or reduce the proposed speedy trial time limits to factor the period between first appearance and arraignment. I caution that although the Supreme Court of Guam's opinion in *People v. Rasauo*, 2011 Guam 14, holds that, absent good cause, a criminal complaint must be

dismissed when a defendant is not promptly arraigned within 60 days of filing the complaint, this 60-day period is the outside limit and is not the typical period in which defendants are arraigned in the Superior Court. Thus, any reduction in our proposed speedy trial time limits should not necessarily factor 60 days between first appearance and arraignment.

I welcome the suggestion to have a roundtable discussion to address these and any other concerns that may be raised by other testimony. I ask that any such roundtable be scheduled as early as practicable given the Judiciary's interest in moving these bills further along the legislative process.

I have enclosed supplemental materials that may be useful in the Legislature's consideration of the four bills, including research on jury size, peremptory challenges, and speedy trial time limits in other jurisdictions. I also include some technical edits to the bills to correct typographical errors.

The Judiciary's mission is "to administer justice by interpreting and upholding the laws, resolving disputes in a timely manner, and providing accessible, efficient, and effective court services." The COVID-19 pandemic has impeded the court's ability to fulfill its mandates and threatens the timely delivery of justice services to all those who come before our courts. As the administrative head of the judicial branch of Guam, it is my duty to not only uphold the court's mission but ensure that we do so in a safe and responsible manner. Please let me know how we can work together to better serve the people of Guam.

Senseramente,

F. PHILIP CARBULLIDO
Chief Justice of Guam

Enclosures:

JOG technical edits - Bill No. 408-35 (COR) - Magistrate expansion
JOG technical edits - Bill No. 409-35 (COR) - Increase use of 6-member juries
JOG technical edits - Bill No. 410-35 (COR) - Peremptory Challenges
JOG technical edits - Bill No. 411-35 (COR) - Speedy Trial
Jury size research - Bill No. 409-35 (COR)
Peremptory challenge research - Bill No. 410-35 (COR)
Speedy trial research - Bill No. 411-35 (COR)

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
408-35 (COR)	Therese M. Terlaje	AN ACT TO AMEND § 4401(c) OF ARTICLE 4 OF CHAPTER 4, TITLE 7, GUAM CODE ANNOTATED AND TO AMEND § 40.50(a) OF CHAPTER 40 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO EXPANDING THE POWERS OF THE SUPERIOR COURT OF GUAM MAGISTRATES TO INCLUDE THE AUTHORITY TO PRESIDE OVER ADDITIONAL NON-DISPOSITIVE HEARINGS AND TO MODIFY BAIL CONDITIONS.	9/24/20 9:55 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 408-35 (COR)

Introduced by: Therese M. Terlaje Tmt

AN ACT TO AMEND § 4401(c) OF ARTICLE 4 OF CHAPTER 4, TITLE 7, GUAM CODE ANNOTATED AND TO AMEND § 40.50(a) OF CHAPTER 40 OF TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO EXPANDING THE POWERS OF THE SUPERIOR COURT OF GUAM MAGISTRATES TO INCLUDE THE AUTHORITY TO PRESIDE OVER ADDITIONAL NON-DISPOSITIVE HEARINGS AND TO MODIFY BAIL CONDITIONS.

BE IT ENACTED BY THE PEOPLE OF GUAM

Section 1. Legislative Intent and Findings.

I Liheslaturan Guahan finds that there are certain non-dispositive hearings over which Superior Court judges currently preside which are appropriate for a magistrate to decide. The expansion of the statutory authority of the magistrates of the Superior Court of Guam will provide the courts with an efficient supplemental judicial resource to assist in expediting its workload.

~~*I Liheslaturan Guahan* finds that there are certain non-dispositive hearings over which Superior Court judges currently preside which are appropriate for a magistrate to decide. The expansion of the statutory authority of the magistrates of the Superior Court of Guam will provide the courts with an efficient supplemental judicial resource to assist in expediting its workload.~~

Therefore, it is the intent of *I Liheslaturan Guahan* to expand the powers of the Superior Court of Guam magistrates to allow them to perform additional duties, such as disposing of pretrial matters, issuing search warrants and warrants of arrest, performing marriages, and hearing bail redetermination motions. This additional authority will allow Superior Court judges to more efficiently and effectively preside over criminal trials and ensure the timely and fair adjudication of all matters before the Superior Court of Guam.

Section 2. § 4401(c) of Article 4 of Chapter 4, Title 7, Guam Code Annotated, is hereby *amended* to read as follows:

"(c) ~~All~~As assigned by the Chief Justice, a magistrate *shall*:

(1) preside over and render decisions and judgments in small claims cases, traffic cases, change of name petitions, and collection cases, and may grant uncontested divorces in cases where there is a notarized consent on file;

(2) enter judgment upon confession of judgment or default judgment in a civil case when a party alleges a sum certain is due;

(3) preside over post-judgment collection proceedings in civil cases and restitution judgments in criminal cases, and issue writs of execution and other orders in such proceedings;

(4) preside over first appearances of criminal defendants and arraignments in criminal cases, set or modify bail and order pre-trial release conditions~~,~~ or detention, take pleas, including accepting guilty ~~picas~~pleas in misdemeanor cases, sentencing misdemeanants and entering judgments accordingly;

(5) issue summons, issue bench warrants, and hear return of warrants in all ~~cases to which assigned~~;

(6) preside over any matten whioh may be heard by a Referee of the Superior Court of Guam;

(7) serve as a Special Master upon appointment by the Presiding Judge;

(8) serve as Judge Pro Temporare upon appointment by the Chief Justice;

(9) serve as a settlement judge in a civil or domestic case upon appointment by the Presiding Judge;

(10) conduct criminal trial setting hearings;

(11) preside over preliminary hearings in criminal cases, and render decisions and judgments over procedural and discovery motions in criminal matters;

(12) preside over initial scheduling conferences in civil matters, to include, but not limited to: initial pretrial conferences, case scheduling, discovery disputes, motions, and settlement efforts; ~~and~~

(13) preside over unlawful detainer proceedings~~.~~;

(14) hear and determine any pretrial matter, other than case dispositive motions, and preside over status hearings in all matters;

(15) issue search warrants and issue arrest warrants in all cases;

(16) take grand jury returns; and

(17) perform marriages."

Section 3. § 40.50(a) of Title 8, Guam Code Annotated, is hereby *amended* to read as follows:

"(a) A person for whom conditions of release are imposed pursuant to this Chapter, and who after twenty-four (24) hours from the time of release hearing continues to be detained as a result of his inability to meet the

conditions of release, shall, upon application, be entitled to have the conditions reviewed by the Court. ~~If the case has not yet been assigned to a particular Court,~~ ~~t~~The conditions are to be reviewed by the judge or magistrate who imposed them, or by another ~~the assigned ex-parte judge if the judge who imposed the conditions is not available. If the case has been assigned to a particular Court, the conditions are to be reviewed by the assigned~~ judge. Unless the conditions of release are amended and the person is thereupon released, the judge or magistrate shall set forth in writing the reasons for requiring the conditions imposed."

Section 4. Effective Date. This Act shall become effective upon enactment.

Bill No. 409-35 (COR)
Jury Size – Jurisdictional Comparison[1]

Bill No. 409-35 (COR) proposes to expand the use of six-person juries. Currently, only misdemeanor and lower cases are decided by a jury of six persons; under the proposed amendments, cases involving third degree felony charges would also be decided by a six-person jury. Prior to the COVID-19 outbreak, there were at least six United States jurisdictions that already authorized the use of juries with less than twelve persons in at least some felony cases:

- The **CNMI** requires juries of six for all criminal cases, from petty misdemeanors through the highest-grade felonies.[2]
- **Connecticut** permits juries of six for all criminal cases except those in which the defendant faces death or life imprisonment.[3]
- **Florida** requires juries of six for all criminal cases except those in which the defendant faces death or life imprisonment.[4]
- **Indiana** requires juries of six for all "Class D" felony cases.[5]
    - A "Class D" felony carries a sentence of up to three years' imprisonment.[6]
- **Louisiana** permits juries of six if the punishment the defendant faces *may* be "confinement at hard labor," except where the punishment the defendant faces *is necessarily* "confinement at hard labor."[7]
    - In Louisiana's unique legal system, "confinement at hard labor" appears to mean incarceration at a state facility. Hence, a jury of six is permissible where a conviction would potentially put the defendant in a state penitentiary, but where such a sentence is not mandatory under the relevant sentencing statute.

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[1] The following research memorandum was prepared by the Judiciary of Guam in the course of drafting the proposals which resulted in Bill No. 409-35 (COR). The information contained in this document is provided to the Guam Legislature for informational purposes only and should not be construed as legal advice or as a legal opinion on any subject matter.

[2] NMI R. Crim. P. 23(b) ("Juries shall be of six . . . .").

[3] CT Gen Stat § 54-82(c) (2015) ("[T]he accused shall be tried by a jury of six except that no person charged with an offense which is punishable by death, life imprisonment without the possibility of release or life imprisonment, shall be tried by a jury of less than twelve without such person's consent.").

[4] Art. I § 22, Fla. Const. ("The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.")

[5] *See* Indiana Jury Rules 16(a) (juries of six are permitted for "any other crime" than Class A, B, and C level felonies); IN Code § 35-50-2-7 Sec. 7(a) (2017) (defining "Class D" felony).

[6] IN Code § 35-50-2-7 Sec. 7(a) (2017) (defining "Class D" felony).

[7] La. Code Crim Pro 782(a) (2011) ("Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. Cases in which the punishment may be confinement at hard labor shall be tried by a jury composed of six jurors, all of whom must concur to render a verdict.").

- **Utah** requires juries of eight for all non-capital felonies.[8]

Additionally, **Massachusetts**, in response to the COVID-19 pandemic, has authorized juries of six with the consent of the defendant.[9]

[8] UT Code § 78B-1-104(1)(b)(2018) (trial jury consists of eight persons in all non-capital cases, even "noncapital first degree felony aggravated murder").

[9] Supreme Judicial Court of the Commonwealth of Massachusetts, Fourth Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic (Sept. 17, 2020).

Bill No. 410-35 (COR)
Peremptory Challenges – Jurisdictional Comparison[1]

Bill No. 410-35 (COR) proposes that if a criminal defendant is facing a prison sentence of fifteen years or more, both the defendant and the government may exercise **twelve peremptory challenges**. This reduces the number of peremptory challenges in life imprisonment cases from twenty to twelve per side. At the same time, it increases the number of peremptory challenges in cases where a defendant faces at least fifteen years of imprisonment but less than a life sentence. Currently in such cases, the government is entitled to six peremptory challenges while the defendant or defendants are jointly entitled to ten peremptory challenges. Under the proposed amendments, each side would be entitled to twelve peremptory challenges. Twelve is the same or more peremptory challenges than a similarly situated defendant would receive in at least thirty United States jurisdictions:

- **CNMI**: five (5) for any felony charge[2]
- **Alaska**: ten (10) for any felony charge[3]
- **Arizona**: ten (10) if it is a capital case; six (6) if lower maximum sentence[4]
- **Arkansas**: twelve (12) if defendant is charged with murder; eight (8) if defendant charged with any other felony[5]
- **Colorado**: ten (10) for any felony charge[6]
- **Delaware**: twelve (12) if it is a capital case; six (6) if lower maximum sentence[7]
- **Florida**: ten (10) if defendant faces life imprisonment or death; six (6) if lower maximum sentence[8]
- **Hawaii**: twelve (12) if defendant faces life imprisonment; three (3) if lower maximum sentence[9]
- **Idaho**: ten (10) if defendant faces life imprisonment; six (6) if lower maximum sentence[10]

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[1] The following research memorandum was prepared by the Judiciary of Guam in the course of drafting the proposals which resulted in Bill No. 410-35 (COR). The information contained in this document is provided to the Guam Legislature for informational purposes only and should not be construed as legal advice or as a legal opinion on any subject matter.

[2] NMI R. Crim. P. 24(b)

[3] Alaska R. Crim. P. 24(d)

[4] 6A A. R. S. Rules Crim. Proc., Rule 18.4 (2019)

[5] AR Code. § 16-33-305 (2014)

[6] Colo. R. Crim. P. 24(d)(2)

[7] De. R. Crim. P. 24(b)(1)

[8] Fla. R. Crim. P. § 3.350(a)

[9] HI Rev Stat § 635-30 (2011)

[10] Id. Crim. R. 24(d)

- **Illinois**: ten (10) for any felony charge[11]
- **Kentucky**: eight (8) for any felony charge[12]
- **Maine**: ten (10) if defendant faces death; eight (8) if lower maximum sentence[13]
- **Maryland**: ten (10) if defendant faces twenty (20) or more years' imprisonment; eight (8) if less than twenty (20) years[14]
- **Massachusetts**: twelve (12) if defendant faces life imprisonment; six (6) if lower maximum sentence[15]
- **Michigan**: five (5) if defendant faces less than life imprisonment[16]
- **Minnesota**: five (5) if defendant faces less than life imprisonment[17]
- **Missouri**: nine (9) if defendant faces life imprisonment; six (6) if less than life imprisonment[18]
- **Montana**: eight (8) if capital crime; six (6) if lower maximum sentence[19]
- **Nebraska**: twelve (12) if capital crime; six (6) if lower maximum sentence[20]
- **North Dakota**: ten (10) if "Class AA felony"; six (6) for any other felony charge[21]
- **Ohio**: six (6) if capital crime; four (4) if lower maximum sentence[22]
- **Oklahoma:** nine (9) if charge is First Degree Murder; five (5) for any other felony charge[23]
- **Oregon**: twelve (12) if capital crime; six (6) if lower maximum sentence[24]
- **Rhode Island**: six (6) for any felony charge[25]

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[11] 725 ILCS 5/115-4(e)

[12] KY ST RCRP Rule 9.40

[13] Me. R. Crim. P. 24

[14] MD Rules, Rule 4-313(a)

[15] Mass. R. Crim. P. 20

[16] Mich. Comp. Laws. § 768.12

[17] Minn. R. Crim. P. 26.02

[18] MS Code § 99-17-3 (2013)

[19] MO Rev Stat. § 494.480

[20] NE Rev Stat. § 29-2005

[21] ND R. Crim. P. 24

[22] Ohio Crim. R. 24(D)

[23] 22 OK Stat 20 § 22-655 (2014)

[24] OR Rev. Stat § 136.230 (2013)

[25] RI Super Ct. R. Crim. P. 24(b) (2019)

- **South Carolina**: ten (10) for certain enumerated crimes such as murder and armed robbery; five (5) for non-enumerated crimes[26]
- **Utah**: ten (10) if capital crime; four (4) if lower maximum sentence[27]
- **Vermont**: six (6) for any felony charge[28]
- **Washington**: twelve (12) if capital crime; six (6) if lower maximum sentence[29]
- **Wisconsin**: six (6) if defendant faces life imprisonment; four (4) if lower maximum sentence[30]
- **Wyoming**: twelve (12) if capital crime; eight (8) if lower maximum sentence[31]

Bill No. 410-35 (COR) also proposes that if a criminal defendant is facing a felony charge that carries a maximum sentence of less than fifteen years' imprisonment, the defendant and the government may exercise **six peremptory challenges**. Six is the same or more peremptory challenges than a similarly situated defendant would receive in approximately thirty United States jurisdictions—not all of which are the same as the jurisdictions cited above:[32]

- **CNMI**: five (5)
- **Arizona**: six (6)
- **Colorado**: five (5)
- **Connecticut**: six (6)[33]
- **Delaware**: six (6)
- **Florida**: six (6)
- **Hawaii**: three (3)
- **Idaho**: six (6)
- **Louisiana**: six (6)
- **Maryland**: four (4)
- **Massachusetts**: four (4)
- **Michigan**: five (5)
- **Minnesota**: five (5)
- **Mississippi**: six (6)
- **Missouri**: six (6)

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[26] SC Code § 14-7-1110 (2013)

[27] Utah R. Crim. P. 18(d)

[28] Vt. R. Crim. P. 24(c)(3)

[29] Wash. CrR. 6.4(e)(1)

[30] WI Stat § 972.03 (2012)

[31] WY Stat § 7-11-103(a) (2014)

[32] If there is no footnote attached to a state listed in this section, then the information derives from the relevant state statute/rule cited in the previous section.

[33] CT Gen Stat § 54-82g (2012)

- **Montana**: six (6)
- **Nebraska**: six (6)
- **Nevada**: four (4)
- **New Hampshire**: three (3)[34]
- **North Carolina**: six (6)[35]
- **North Dakota:** six (6)
- **Ohio**: four (4)
- **Oklahoma**: five (5)
- **Oregon**: six (6)
- **Rhode Island**: six (6)
- **South Carolina**: five (5)
- **Utah**: four (4)
- **Vermont**: six (6)
- **Washington**: six (6)
- **Wisconsin**: four (4)

Finally, Bill No. 410-35 (COR) proposes that if a criminal defendant is facing only non-felony charges, the defendant may exercise two peremptory challenges. This is a lower number than any United States jurisdiction traditionally offers. However, due to COVID concerns, **Idaho** has temporarily reduced the number of peremptory challenges in misdemeanor cases from four to two.[36] Similarly, during its "Phase One" reopening of the courts **Massachusetts** will permit all criminal defendants in the District Court and Boston Municipal Courts to exercise just two peremptory challenges.[37] Finally, in **Arizona**, the usual number of six peremptory challenges on each side for non-death penalty cases has been temporarily reduced to two on each side for felony cases and one on each side for misdemeanor cases.[38]

[34] N.H. R. Crim. P. 22(d)

[35] NC Gen Stat. § 15A-1217

[36] Supreme Court of Idaho, In RE: Jury Trials (July 24, 2020).

[37] *Supra*, note 8.

[38] Supreme Court of Arizona, In RE: Authorizing Limitation of Court Operations During a Public Health Emergency and Transition to Resumption of Certain Operations (Aug. 26, 2020).

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
410-35 (COR)	Therese M. Terlaje	AN ACT TO AMEND § 85.30 OF CHAPTER 85, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO REDUCING THE NUMBER OF PEREMPTORY CHALLENGES AVAILABLE IN CRIMINAL CASES.	9/24/20 10:42 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 410-35 (COR)

Introduced by: Therese M. Terlaje TMT

AN ACT TO AMEND § 85.30 OF CHAPTER 85, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO REDUCING THE NUMBER OF PEREMPTORY CHALLENGES AVAILABLE IN CRIMINAL CASES.

BE IT ENACTED BY THE PEOPLE OF GUAM

Section 1. Legislative Intent and Findings.

I Liheslaturan Guahan finds that the COVID-19 pandemic and the subsequent closure of the Superior Court of Guam has caused a significant interruption to Guam's legal system. The ensuing backlog of criminal cases threatens the statutory right of all criminal defendants to demand a speedy jury trial. Moreover, the current size limitations of Judiciary of Guam facilities constrain the court's ability to safely recommence jury selection proceedings in light of social distancing mandates necessitated by the COVID-19 pandemic and the legitimate health concerns of criminal defendants, attorneys, court employees, and those called to jury service. These constraints will cause further delay in the court's ability to tackle its backlog and will have lasting effects on the delivery of justice in all cases before the court.

I Liheslaturan Guahan finds that the large number of peremptory challenges available to both sides in criminal cases greatly lengthens the jury selection process. Reducing the number of peremptory challenges would produce significant savings

in the administration of the jury system, including reducing the number ofjurors summoned fur jury selection. Additionally, the social distancing measures necessitated by the COVID-19 pandemic will cause significantly greater delays in the jury selection process and warrant a reduction in the number of persons summoned fur jury selection.

Therefore, it is the intent of *I Liheslaturan Guahan* to strike a necessary compromise between the rights of criminal defendants to a fair and speedy trial and the capabilities of the court to carry out its mandates. *I Liheslaturan Guahan* finds that this can be accomplished by reducing -for a limited period-the number of peremptory challenges available to criminal defendants and to prosecutors under current Guam law. Fewer peremptory challenges will permit a quicker process in selecting a jury while also reducing the number of potential jurors who must report for jury service.

Section 2. § 85.30 of Title 8, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 85.30. Peremptory Challenges; Number Available.**

~~In a prosecution by indictment or information if the offense charged is punishable by a life sentence, each side is entitled to twenty peremptory challenges, otherwise the government is entitled to six peremptory challenges and the defendant or defendants jointly to ten peremptory challenges. In a prosecution by complaint, each side is entitled to three peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.~~ In any felony prosecution where the offense charged may be punishable by a sentence of fifteen or more years of incarceration, each side is entitled to twelve peremptory challenges. In any felony prosecution where the offense charged may be punishable by a sentence of less than fifteen years

of incarceration, the defense is entitled to six peremptory challenges and the prosecution is entitled to three peremptory challenges. In any misdemeanor or petty misdemeanor prosecution, the defense is entitled to two peremptory challenges and the prosecution is entitled to one peremptory challenge. In any criminal prosecution where there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately."

Section 3. Sunset Provision. The amendments to 8 GCA § 85.30 as provided in Section 2 of this Act shall be deemed repealed two (2) years after the enactment of this Act unless new legislation is duly enacted authorizing its continuation.

Section 4. Effective Date. This Act shall become effective upon enactment.

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
411-35 (COR)	Therese M. Terlaje	AN ACT TO AMEND § 80.60 OF CHAPTER 80, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO EXTENDING THE TIME IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL.	9/24/20 10:52 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 411-35 (COR)

Introduced by: Therese M. Terlaje TMT

AN ACT TO AMEND § 80.60 OF CHAPTER 80, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO EXTENDING THE TIME IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL.

BE IT ENACTED BY THE PEOPLE OF GUAM

Section 1. Legislative Intent and Findings.

I Liheslaturan Guahan finds that criminal defendants have a right to a speedy trial under the Sixth Amendment to the United States Constitution, extended to Guam by the Organic Act of Guam. This right has been effectuated by 8 GCA § 80.60 and its predecessors, setting forth the criteria for when a case may or may not be dismissed for reasons of time. *I Liheslaturan Guahan* finds that in addition to protecting the rights of criminal defendants, the speedy trial statute furthers the interests of the public and of victims of crimes in the fair, accurate, and timely resolution of criminal cases.

I Liheslaturan Guahan finds that while the right to a speedy trial is of significant importance, the right is not absolute. Further, there is no set standard for speedy trial limits throughout the United States, with each state adopting its own time limits. Guam's current time limits of 45 days for in-custody defendants and 60 days for not-in-custody defendants is among the shorter time limits in the nation. Criminal defendants in Guam often must choose between waiving their right to a speedy trial because they do not yet feel ready to proceed to trial or asserting their

right to a speedy trial and risk not being prepared to defend themselves. Many defendants assert, waive, and re-assert their speedy trial rights multiple times throughout a case because they are not prepared to proceed to trial as the speedy trial limit draws near. This leads to an ineffective use of judicial resources as cases are constantly rescheduled based on their priority among other asserted speedy trial cases. A longer speedy trial time period will ensure that defendants are not rushed to trial without adequate opportunity to prepare and will result in a more effective utilization of resources.

I Liheslaturan Guahan finds that the time limits in the American Bar Association (ABA) Standards on Speedy Trial and Timely Resolution of Criminal Cases (3d ed. 2006) provide for a much more realistic time period to bring criminal defendants to trial as compared to the 45- and 60-day time limits currently set forth in 8 GCA § 80.60. Under the ABA standards, the presumptive speedy trial time limit for in-custody defendants is 90 days from the date of arraignment, and 180 days for defendants who are not in custody. Shorter presumptive time limits are recommended for persons charged with minor offenses.

Therefore, it is the intent of *I Liheslaturan Guahan* to increase the speedy trial time limits for in-custody misdemeanor defendants to 60 days and for not-in-custody misdemeanor defendants to 75 days. Further, it is the intent of *I Liheslaturan Guahan* to increase the speedy trial limits for in-custody felony defendants to 90 days and for not-in-custody felony defendants to 180 days.

Section 2. § 80.60 of Chapter 80, Title 8, Guam Code Annotated is hereby *amended* to read as follows:

"§ 80.60. When a Case to be Dismissed, or Not Dismissed for Reasons of Time.

(a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:

(1) An information is not filed or an indictment returned within the time prescribed by §§ 45.45, 45.50 and 45.80;

(2) The trial of a defendant, who is charged with a misdemeanor and is in custody at the time of his arraignment, has not commenced within ~~forty-five (45)~~ sixty (60) days after his arraignment; ~~or~~

(3) The trial of a defendant, who is charged with a misdemeanor and is not in custody at the time of his arraignment, has not commenced within ~~sixty (60)~~ seventy-five (75) days after his arraignment~~.~~;

(4) The trial of a defendant who is charged with a felony and is in custody at the time of his arraignment has not commenced within ninety (90) days after his arraignment: or

(5) The trial of a defendant, who is charged with a felony and is not in custody at the time of his arraignment, has not commenced within one hundred eighty (l80) days after his arraignment.

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if:

(1) The action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, express or implied, and he is brought to trial on the date so set or within ten (10) days thereafter;

(2) The defendant failed to appear for trial and he is brought to trial within thirty (30) days following his next appearance in the trial court; or

(3) Good cause is shown for the failure to commence the trial within the prescribed period."

Section 3. Effective Date. This Act shall become effective upon enactment.

Bill No. 411-35 (COR)
Speedy Trial – Jurisdictional Comparison[1]

I. A Comparison Between Guam's Current Statute and the Proposed Amendments

Bill No. 411-35 (COR) seeks to permanently amend 8 GCA § 80.60 (2005) to increase the statutory speedy trial time limits in criminal cases. Section 80.60 was derived from California Penal Code section 1382, which has been amended since this jurisdiction's adoption of the provision in 1976. *See Nicholson v. Superior Court*, 2007 Guam 9 ¶ 26. The notes to section 80.60 provide that such section "continues the policy of enforcing specific time limits for filing an information or indictment and commencing trial." 8 GCA § 80.60, Note. The policy underlying the prompt disposition of a criminal trial is also favored in 8 GCA § 80.50, which provides that "criminal cases shall be set for trial and heard and determined at the earliest possible time."

Section 80.60 provides that, unless good cause is shown, a defendant in custody must be brought to trial within 45 days after his arraignment, or 60 days if the defendant is not in custody at the time of his arraignment. If a defendant is not brought to trial within the time prescribed and no good cause is shown, the trial court must dismiss the indictment. Bill No. 411-35 (COR) would extend these time limits and create distinctions between felonies and misdemeanors.

The Judiciary's proposed changes to 8 GCA § 80.60, as expressed in Bill No. 411-35 (COR), amends the statute as follows:

> **§ 80.60. When a Case to be Dismissed, or Not Dismissed for Reasons of Time.**
>
> (a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:
>
> (1) An information is not filed or an indictment returned within the time prescribed by §§ 45.45, 45.50 and 45.80;
>
> (2) The trial of a defendant, who is charged with a misdemeanor and is in custody at the time of his arraignment, has not commenced within ~~forty-five (45)~~sixty (60) days after his arraignment; ~~or~~
>
> (3) The trial of a defendant, who is charged with a misdemeanor and is not in custody at the time of his arraignment, has not commenced within ~~sixty (60)~~seventy-five (75) days after his arraignment~~.~~;

[1] The following research memorandum was prepared by the Judiciary of Guam in the course of drafting the proposals which resulted in Bill No. 411-35 (COR). The information contained in this document is provided to the Guam Legislature for informational purposes only and should not be construed as legal advice or as a legal opinion on any subject matter.

(4) The trial of a defendant, who is charged with a felony and is in custody at the time of his arraignment, has not commenced within ninety (90) days after his arraignment; or

(5) The trial of a defendant, who is charged with a felony and is not in custody at the time of his arraignment, has not commenced within one hundred eighty (180) days after his arraignment.

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if:

(1) The action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, express or implied, and he is brought to trial on the date so set or within ten (10) days thereafter;

(2) The defendant failed to appear for trial and he is brought to trial within thirty (30) days following his next appearance in the trial court; or

(3) Good cause is shown for the failure to commence the trial within the prescribed period.

II. Rationale for Amending 8 GCA § 80.60

The rationale for amending the current statute is three-fold. First, there is a growing backlog of criminal cases as a result of the current public health emergency, and this amendment would aid the court in processing these cases. Second, as the Judicial Council expressed in Resolution No. JC20-026, permanently amending the statutory speedy trial time limits in criminal cases would lessen the strain on judicial resources while aiding a defendant's ability to prepare for trial. Lastly, this amendment would bring Guam's speedy trial time limits closer to the American Bar Association's recommended time limits for bringing a defendant to trial.

As stated in Resolution No. JC20-026, Guam's current speedy trial time limits are among the shorter time limits in the nation (see highlights table below). Accordingly, criminal defendants often must choose between waiving their right to a speedy trial because they do not yet feel ready to proceed or asserting their right to a speedy trial and risk not being fully prepared to defend themselves. Many defendants assert, waive, and re-assert their speedy trial rights multiple times throughout a case because they are not prepared to proceed to trial as the speedy trial limit draws near. This leads to an ineffective use of judicial resources as cases are often rescheduled based on their priority among other asserted speedy trial cases. A longer speedy trial time period will ensure that defendants are not rushed to trial without adequate opportunity to prepare and will result in a more effective utilization of resources.

Furthermore, the American Bar Association (ABA) Standards on Speedy Trial and Timely Resolution of Criminal Cases provide for a much more realistic time period to bring criminal defendants to trial as compared to the 45- and 60-day time limits currently set forth in 8 GCA §

80.60. Under the ABA standards, the presumptive speedy trial time limit for in-custody defendants is 90 days from the defendant's first appearance in court after the filing of a charging instrument, and 180 days for defendants who are not in custody. *See* ABA Standards on Speedy Trial and Timely Resolution of Criminal Cases 12-2.1 (3d ed. 2006). Shorter presumptive time limits are recommended for persons charged with minor offenses. *Id.* According to the ABA, these standards support three 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." *Id.* at 12-1.1.

III. Comparison of Guam's Statutory Approach with Other Jurisdictions

Guam's current law sets one of the shortest statutory time limits for a jurisdiction to bring a criminal defendant to trial. Our current statutory requirements are below the federal standard, the ABA standard, and the national average. The 45- and 60-day time limits currently used by Guam are used by only 8-20% of other jurisdictions. Only a tenth of other jurisdictions set a 45- to 60-day limit for felony cases, and only a fifth of other jurisdictions do so for misdemeanor cases. Notably, these statistics represent only jurisdictions that set a statutory standard. Around one-fifth[2] of jurisdictions (including the CNMI) have no statutory time limits at all, and instead rely on the constitutional standard created by *Barker v. Wingo*, 407 U.S. 514 (1972), to determine whether a defendant's right to a speedy trial has been violated. *Barker* created a four-part balancing test where the court assesses the following factors: (1) the length of the delay, (2) the reason for the delay, (3) when the defendant asserted his right to speedy trial, (4) and the prejudice suffered by the defendant as a result of the delay. This test consistently does not lead to the 45- to 60-day time limit currently set by Guam's statute.

California, the jurisdiction from which 8 GCA § 80.60 is derived, uses a 30-day limit for misdemeanor cases and a 60-day limit for felony cases. Amending our statute would place Guam well within the norm of the other jurisdictions in our circuit.

[See table on next page.]

[2] Our survey finds 18% of jurisdictions have no statutory time limit for any crime. 28% have no statutory time limit for bringing a criminal defendant to trial when the defendant is out of custody.

Ninth Circuit Statutory Standards

State	Misdemeanor Time Limit	Felony Time Limit
California	30 days	60 days
Nevada	60 days	60 days
Washington	60 days (if in custody) 90 days (if not in custody)	60 days (if in custody) 90 days (if not in custody)
Guam's Proposal	**60 days (if in custody)** **75 days (if not in custody)**	**90 days (if in custody)** **180 days (if not in custody)**
Arizona	150 days (if in custody) 180 days (if not in custody)	150 days (if in custody) 180 days (if not in custody)
Idaho	180 days	180 days
Montana	180 days	180 days
Oregon	2 years	3 years

Our survey found that 150- to 180-day time limits were the most common. The majority of jurisdictions use 150- to 180-day time limits or more. Almost a fifth of jurisdictions set statutory time limits for a year or more, far exceeding the ABA recommendations and the federal standard.

IV. 50-State and U.S. Territories Survey: The Data Set

The following two tables show a summary of statutes setting time limits for states to bring a criminal defendant to trial. This survey does not account for time limits set through caselaw. Some jurisdictions take a tiered approach, setting different time limits for specific crimes (e.g., murder may have no time limit, sex trafficking may have a ten-year limit). For states that use a tiered approach, only the statute(s) that applied to the majority of felonies and/or misdemeanors were assessed.

Table 1 has five columns; the first column lists the standard. "30 days" means "a jurisdiction has set a statutorily prescribed standard of 30 days to bring a criminal defendant to trial." The next four columns explain when the standard applies. Two jurisdictions have a statutorily prescribed limit of 30 days for bringing an in-custody defendant to trial. One jurisdiction has a 30-day limit to bring a not-in-custody misdemeanor defendant to trial.

Rows two, three, and four list the Judiciary's proposal, the ABA recommendation, and the federal standard.

Table 1: Summary of statutes

	Misdemeanor, in custody	Misdemeanor, no custody	Felony, in custody	Felony, no custody
Guam's Proposal	60 days	75 days	90 days	180 days
ABA Recommendation	none	none	90 days	180 days
Federal Standard	70 days	70 days	70 days	70 days
30 days	2 jurisdictions	1 jurisdiction		
60 days	6 jurisdictions	4 jurisdictions	5 jurisdictions	3 jurisdictions
90 days	1 jurisdiction	3 jurisdictions	2 jurisdictions	3 jurisdictions
120 days	4 jurisdictions	2 jurisdictions	4 jurisdictions	2 jurisdictions
150-180 days	15 jurisdictions	13 jurisdictions	16 jurisdictions	14 jurisdictions
8-9 months	3 jurisdictions	2 jurisdictions	4 jurisdictions	3 jurisdictions
1 year	6 jurisdictions	9 jurisdictions	3 jurisdictions	6 jurisdictions
1.5 years		1 jurisdiction		1 jurisdiction
2 years	2 jurisdictions	2 jurisdictions	1 jurisdiction	1 jurisdiction
Over 2 years			4 jurisdictions	4 jurisdictions
Total States with a Statutory Standard	39 jurisdictions	37 jurisdictions	39 jurisdictions	37 jurisdictions

Table 2 lists the statutory or rule-based time limits for all states and territories, including whether the jurisdiction differentiates between a defendant that is in custody or not in custody, or between a misdemeanor charge and a felony charge. The table also includes citations to the relevant statute, rule, and/or case detailing the approach taken by the jurisdiction in determining a violation of a defendant's right to a speedy trial. The details in the third column include the date on which the time limit begins to run, i.e., from date of arraignment, entry of plea, filing of indictment/information, or first appearance, as those vary by jurisdiction.

[See table beginning on next page.]

Table 2: Time limits for all states and territories

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
Federal	**70 days**	When information or indictment was filed, or from the date the defendant appears before an officer of the court in which the charge is pending, whichever is later	18 U.S.C.A. § 3161 (West)
Guam (current)	**45 days** if in custody; **60 days** if not in custody	Arraignment	8 GCA § 80.60(a)
Alabama	None, relies on *Barker* test	N/A	Ala. R. Crim. P. 8.1
Alaska	**120 days**	When charging document is served on defendant	Alaska R. Crim. P. 45
Arizona	**150 days** if in custody; **180 days** if not in custody	Arraignment	Ariz. R. Crim. P. 8.2
Arkansas	**9 months** if in custody; **12 months** if not in custody	Arrest or service of summons	Ark. R. Crim. P. 28.1
California	Misdemeanor: **30 days** Felony: **60 days**	Arraignment	Cal. Penal Code § 1382
Colorado	**180 days**	Entry of plea	Colo. Rev. Stat. Ann. § 18-1-405 (West)

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
Connecticut	**8 months** if in custody; **12 months** if not in custody	Filing of information or arrest	Conn. Practice Book Sec. 43-39; Conn. Gen. Stat. Ann. § 54-82m (West)
Delaware	None, relies on *Barker* test	N/A	*See State v. Duonnolo*, No. 1906013859, 2020 WL 2467077 (Del. Super. Ct. May 13, 2020)
Florida	Misdemeanor: **90 days** Felony: **175 days**	Arrest	Fla. R. Crim. P. 3.191
Georgia	No specific time limit; trial must commence within the court term the speedy trial is filed or the following term (term lengths vary from county to county)	N/A	O.C.G.A. 17-7-170
Hawaii	**6 months**	Arrest or filing of charge, whichever is sooner	Haw. R. Penal P. 48
Idaho	**6 months**	Entry of plea for misdemeanors; arraignment for felonies	Idaho Code Ann. § 19-3501 (West)
Illinois	**120 days** if in custody; **160 days** if not in custody	When defendant is taken into custody	725 Ill. Comp. Stat. Ann. 5/103-5

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
Indiana	**6 months** if in custody; **1 year** if not in custody	Filing of criminal charge	Ind. R. Crim. P. 4
Iowa	**90 days**	Indictment	Iowa R. Crim. P. 2.33
Kansas	**150 days** if in custody; **180 days** if not in custody	Arraignment	KS ST 22-3402
Kentucky	None, relies on *Barker* test	N/A	*See Miller v. Commonwealth*, 283 S.W.3d 690 (Ky. 2009)
Louisiana	Misdemeanor: **1 year** Felony: **2 years**	Institution of criminal proceedings	La. Code Crim. Proc. Ann. art. 578
Maine	None; relies on "unreasonable delay" test	N/A	ME R. U. Crim. P R. 48; *See State v. Cadman*, 476 A.2d 1148 (Me. 1984)
Maryland	**180 days**	Appearance of counsel, or first appearance if matter is in state circuit court	Md. Code Ann., Crim. Proc. § 6-103 (West); Md. Rule 4-271
Massachusetts	**12 months**	Arraignment	Mass. R. Crim. P. 36
Michigan	None, relies on *Barker* test	N/A	MCL 768.1; MCR 6.004A
Minnesota	**60 days**	Entry of plea	Minn. R. Crim. P. 6.06; Minn. R. Crim. P. 11.09

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
Mississippi	**270 days**	Arraignment	Miss. Code. Ann. § 99-17-1 (West)
Missouri	None, relies on *Barker* test	N/A	Mo. Ann. Stat. § 545.780 (West)
Montana	**6 months**	Arraignment	Mont. Code Ann. § 46-13-401
Nebraska	**6 months**	Indictment	NE ST 29-1207
Nevada	**60 days**	N/A	Nev. St. Ann. 34.700
New Hampshire	Misdemeanor **1 year** Felony: **6 years**	N/A	N.H. Rev. Stat. Ann. § 625:8
New Jersey	Misdemeanor: **1 year** Felony: **7 years**	Commission of the offense	N.J. Stat. Ann. § 2C:1-6
New Mexico	**182 days**	Filing of the complaint or the date of arrest, whichever is later	NM R MAG CT RCRP Rule 6-506
New York	Misdemeanor: **60-90 days** Felony: **6 months**	Commencement of a criminal action	N.Y. Crim. Proc. Law § 30.30
North Carolina	None, relies on *Barker* test	N/A	*See State v. Spivey, 579 S.E.2d 251 (N.C. 2003)*

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
North Dakota	Misdemeanor: **2 years** Felony: **3-21 years**	Commission of the offense	N.D. Cent. Code Ann. § 29-04-02 29-04-01 through § 29-04-03.1
Ohio	Misdemeanor: **30-90 days** Felony: **270 days**	Arrest or service of summons	Ohio Rev. Code Ann. § 2945.71
Oklahoma	**1 year** if in custody; **18 months** if not in custody	Arrest	Okla. Stat. Ann. tit. 22, § 812.1
Oregon	Misdemeanor: **2 years** Felony: **3 years**	Filing of the complaint	Or. Rev. Stat. Ann. § 135.746
Pennsylvania	**6 months** if in custody; **1 year** if not in custody	Filing of the complaint	234 Penn. Admin. Code R. 600
Rhode Island	**6 months**	Indictment	12 R.I. Gen. Laws Ann. § 12-13-7
South Carolina	None, relies on *Barker* test	N/A	*See State v. Waites*, 240 S.E.2d 651 (S.C. 1978)
South Dakota	**180 days**	Presentment or indictment	S.D. Codified Laws § 23A-44-5.1
Tennessee	**180 days** if in custody	Presentment or indictment	TN Code 40-31-101

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
Texas	None, relies on *Barker* test	N/A	*See Cantu v. State*, 253 S.W.3d 273 (Tex. Crim. App. 2008)
Utah	Misdemeanor: **2 years** Felony: **4 years**	Commission of the offense	UT Code Ann. § 76-1-302
Vermont	**60 days** if in custody	Commission of the offense	Vt. Stat. Ann. tit. 13, § 4501
Virginia	**5 months** if in custody; **9 months** if not in custody	Presentment or indictment	VA Code Ann. § 19.2-243
Washington	**60 days** if in custody; **90 days** if not in custody	Arraignment	Wash. St Super CT CR CrR 3.3
West Virginia	**1 year**	Presentment or indictment	W. Va. Code Ann. § 62-3-21
Wisconsin	Misdemeanor: **60 days** Felony: **90 days**	Initial appearance in court	Wis. Stat. Ann. § 971.10
Wyoming	**180 days**	Arraignment	Wyo R. Crim. P. Rule 48
American Samoa	None, relies on *Barker* test	N/A	*See Gov't v. Majhor*, 9 Am. Samoa 3d 77, 80 (2004)

Jurisdiction	Statutory or rule-based time limit	Date time limit begins to run	Source
CNMI	None, relies on *Barker* test	N/A	Art. I § 4(d) Comm. Const.; Com. R.Crim. P. 48(b)
Virgin Islands	Misdemeanor: **1 year** Felony: **3 years**	Commission of the offense	VI ST T. 5 § 3541
Puerto Rico	**120 days**	Arraignment	PR ST T. 34 Ap. II § 64