

GENERAL ORDER NO. 29

DETENTION GUIDELINES

Construction of a 100 bed pretrial detention facility at Pleasanton, California is planned by the Bureau of Prisons for completion in December, 1988. Until that facility is completed we will have a serious shortage of beds in the immediate Bay Area for male prisoner-detainees. We are currently averaging 158 male prisoner-detainees per day but have only 96 beds available in the Bay Area. (San Francisco County Jail - 40; Oakland City Jail - 44; San Jose City Jail - 12). Housing for the balance of the prisoner-detainees is available only at distant facilities such as Terminal Island and Colusa.

Each defendant must, of course, be present in the Bay Area at the time of each court appearance. The Marshal's Office recognizes that in addition, defense counsel, the Government, and the Probation Office, all require the presence of the defendant in the immediate Bay Area at certain times and that it is their responsibility to make prisoner-detainees conveniently available to them. However, a review of the appearance records of prisoner-detainees over the past several months suggests that with certain exceptions there are and can be calculated times during the period of pretrial detention, disposition and post-disposition processes when the need for a prisoner-detainee to be housed in a local facility is less than at other times.

These Guidelines are intended to establish standards for determining when prisoner-detainees will be held in local jail

facilities and when they may be transported to more remote facilities. Recognizing and respectful to the procedural and substantive due process rights of prisoner-detainees the cooperation of all parties during this emergency is requested.

Requests for variations from these Guidelines will be considered only upon written motion filed in accordance with Local Rules.

STAGE ONE (custody, day 1 through 13)\*

From the first day that the detainee enters the custody of the U.S. Marshal for the Northern District of California and for 12 days thereafter he will be kept in detention at a local jail facility. This 13 day period will accommodate the initial arraignment on complaint, any detention hearings or bail hearings that might be required, presentation to the Grand Jury, arraignment on any Indictment returned and any appearance for trial setting, identification of counsel, and the like.

If a person is taken into custody on an Indictment, then the 13 days runs from that time. If a person was originally arrested on a warrant issued on the basis of a complaint and is later indicted, no new 13 day period is added because of the Indictment.

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\*Whenever the last day for the measuring period falls on a weekend or holiday, the time will be extended to the end of the next business day.

STAGE TWO (14th day of custody until 22 days prior to scheduled trial date)

Beginning on the 14th day of custody and until 22 days prior to the scheduled trial date, the defendant will be held at a facility outside the Bay Area. To the extent that counsel must confer with the defendant in anticipation of a hearing on various motions, that communication can be accomplished by telephone or by counsel traveling to the place of detention. The defendant will not ordinarily be brought to the Bay Area to be present at hearings on discovery motions.

STAGE THREE (21st day before trial to scheduled trial date and during trial)

The defendant-detainee will be returned to a Bay Area detention facility and remain there from the 21st day before trial to the scheduled trial date or until disposition. This 21 day period should allow adequate time to confer in advance of a hearing on any substantive issues, to prepare for trial and to discuss disposition.

If the scheduled trial date is postponed for any reason, such as because of excludable time, the determination of excludable time and the order postponing the trial date should wherever practicable be made before the defendant-detainee is returned to a local detention facility or, in other words, more than 21 days before the scheduled trial date.

Whenever a disposition short of trial has been reached, the

defendant-detainee should be returned to the District Court for disposition as soon as practicable. A defendant will not normally be returned to a local detention facility only on the representation that "if" the defendant-detainee were returned, the likelihood of disposition would increase.

STAGE FOUR (conviction or guilty plea to 7th day following plea or conviction)

A defendant who pleads guilty or who is convicted will be kept at a local detention facility for 7 days following plea or conviction. This will permit the defendant to confer with his counsel regarding any new trial motion or motion for arrest of judgment under Rule 33 or 34, respectively. It will also provide sufficient time for the Probation Department to assign an officer to the case, to begin the report writing process and to confer at least preliminarily with the defendant regarding preparation of the report.

STAGE FIVE (8th day following plea or conviction to 22nd day before scheduled sentencing)

The defendant-detainee will be held at whatever facility the U.S. Marshal is able to place him in and not necessarily in the Bay Area or this district. The sentencing guidelines suggest that much of the information necessary for inclusion in the presentence report will come from sources other than the

defendant himself. Any need to confer with the defendant regarding unexpected matters can be accomplished by telephone or, in the unusual case, by the Probation Officer traveling to the place where the defendant-detainee is being held.

STAGE SIX (21st day before sentencing to sentencing)

The defendant-detainee will be returned to the Bay Area 21 days before the scheduled date of sentencing. This will accommodate the Probation Officer's need to confer with the defendant before finalizing the report and will permit the defendant to confer with counsel in advance of the sentencing hearing. If the sentencing date is to be postponed, the determination that the postponement is necessary should be made and the order issued more than 21 days before the first scheduled date for sentencing. This will obviate the need for returning the defendant to the Bay Area for an unnecessarily long period of time prior to his scheduled appearance in Court.

STAGE SEVEN (after sentence)

The defendant-detainee will be moved from the district and turned over to the Bureau of Prisons as soon as is practicable

after sentencing. Only in the most extraordinary case will the defendant not be moved immediately to the custody of the Bureau of Prisons.

ADOPTED: January 19, 1988

FOR THE COURT

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CHIEF JUDGE