

By Senator Rossin

35-90-98

1 A bill to be entitled
2 An act relating to the rights of accused
3 persons; amending s. 918.015, F.S.; allowing
4 the Florida Supreme Court discretion in
5 adopting rules that provide for the right of a
6 defendant to a speedy trial; prohibiting a
7 court from discharging a defendant from
8 prosecution unless the court finds a
9 substantive violation of the defendant's right
10 to a speedy trial; amending s. 985.218, F.S.;
11 deleting provisions that provide for dismissal
12 with prejudice if an adjudicatory hearing for a
13 juvenile offender is not held within a
14 specified time; providing for the release of
15 the juvenile until such adjudicatory hearing is
16 complete; repealing Rule 3.191, Florida Rules
17 of Criminal Procedure, relating to a
18 defendant's right to a trial within a specified
19 time; repealing Rule 8.090, Florida Rules of
20 Juvenile Procedure, relating to a juvenile's
21 right to an adjudicatory hearing within a
22 specified time; providing a contingent
23 effective date.

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25 WHEREAS, Section 16, Article I of the State
26 Constitution and the Sixth Amendment to the United States
27 Constitution give criminal defendants the right to a speedy
28 and public trial, and

29 WHEREAS, in 1971, the Legislature enacted chapter
30 71-1(B), Laws of Florida, which authorized the Florida Supreme

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1 Court to make rules of procedure that relate to criminal
2 defendants' right to a speedy trial, and

3 WHEREAS, Rule 3.191, Florida Rules of Criminal
4 Procedure, and Rule 8.090, Florida Rules of Juvenile
5 Procedure, create time periods for a speedy trial which are
6 much stricter than constitutionally necessary and that require
7 courts to dismiss prosecutions against accused criminals and
8 juveniles who have suffered neither a violation of a
9 constitutional right nor an unfair trial, and

10 WHEREAS, the Legislature recognizes that justice
11 delayed is truly justice denied and the courts of this state
12 need rules of practice and procedure to implement both the
13 accused's and the state's right to a speedy trial, and

14 WHEREAS, the Legislature agrees with the dissent in
15 Reed v. State, 649 So.2d 227 (Fla. 1995) which states that
16 current rules that guarantee a speedy trial have created a
17 substantive right of accused criminals and juvenile offenders
18 that encroach upon the power of the Legislature, go far beyond
19 constitutional requirements, and substantially eviscerate the
20 statutes of limitations enacted by the Legislature, and

21 WHEREAS, it is the intent of the Legislature that a
22 defendant or juvenile offender not be forever discharged from
23 prosecution as a consequence of a violation of a speedy-trial
24 rule when there is no concomitant violation of a
25 constitutional or statutory right, NOW, THEREFORE,

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 918.015, Florida Statutes, is
30 amended to read:

31 918.015 Right to speedy trial.--

1 (1) In all criminal prosecutions the state and the
2 defendant shall each have the right to a speedy trial.

3 (2) The Supreme Court may ~~shall~~, by rule of ~~said~~
4 ~~court~~, provide procedures through which the right of the state
5 and the defendant to a speedy trial as guaranteed by
6 subsection (1) and by s. 16, Art. I of the State Constitution,
7 shall be realized. However, a court may not discharge a
8 criminal defendant from prosecution unless it finds a
9 substantive violation of the defendant's constitutional right
10 to a speedy trial.

11 Section 2. Subsection (6) of section 985.218, Florida
12 Statutes, is amended to read:

13 985.218 Petition.--

14 (6)(a) If a petition has been filed alleging that a
15 child has committed a delinquent act or violation of law, ~~and~~
16 ~~no demand for speedy trial has been made pursuant to paragraph~~
17 ~~(d)~~, the adjudicatory hearing on the petition must be
18 commenced within 90 days after the earlier of:

- 19 1. The date the child is taken into custody; or
- 20 2. The date the petition is filed.

21 (b) A child shall be deemed to have been brought to
22 trial if the adjudicatory hearing begins before the judge
23 within the time provided. If the adjudicatory hearing is not
24 commenced within 90 days or an extension thereof as
25 ~~hereinafter~~ provided in paragraph (c), the child must be
26 released from all conditions of detention care until the
27 adjudicatory hearing is completed ~~the petition shall be~~
28 ~~dismissed with prejudice.~~

29 (c) The court may extend the period of time prescribed
30 in paragraph (a) on motion of any party, after hearing, on a
31 finding of cause or that the interest of the child will be

1 served by such extension. The order extending such period
2 must ~~shall~~ state the reasons therefor. The general congestion
3 of the court's docket, lack of diligent preparation, failure
4 to obtain available witnesses, or other avoidable or
5 foreseeable delays are not sufficient cause for such
6 extension.

7 Section 3. Rule 3.191, Florida Rules of Criminal
8 Procedure and Rule 8.090, Florida Rules of Juvenile Procedure,
9 are repealed.

10 Section 4. This act shall take effect October 1, 1998,
11 but section 3 of this act shall take effect only if this act
12 is enacted by a two-thirds vote of the membership of each
13 house of the Legislature.

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15 SENATE SUMMARY

16 Repeals Rule 3.191, Florida Rules of Criminal Procedure,
17 and Rule 8.090, Florida Rules of Juvenile Procedure,
18 which implement the constitutional right of a defendant
19 or juvenile offender to a speedy trial or hearing.
20 Prohibits a court from discharging a defendant from
21 prosecution unless the court finds that the defendant's
22 right to a speedy trial has been substantively violated.
23 Deletes a provision that required the court to dismiss a
24 petition against a juvenile, with prejudice, if the
25 child's adjudicatory hearing had not been held within the
26 specified time. Provides for the juvenile to be released
27 from custody until the hearing is complete.