

1 A bill to be entitled
2 An act relating to criminal trials; amending s. 918.015,
3 F.S.; providing legislative findings and intent concerning
4 speedy trial requirements; specifying periods for
5 commencement of a trial absent a demand for a speedy
6 trial; specifying periods for commencement of a trial when
7 a demand for a speedy trial is made; providing grounds for
8 denial of such a motion; providing for vacation of such a
9 motion upon good cause; providing for extensions of time;
10 providing requirements for a speedy trial motion;
11 providing for dismissal of charges if a defendant is not
12 brought to trial within the time period prescribed by the
13 court; providing requirements for motions for dismissal;
14 providing limitations on refileing of charges following a
15 dismissal without prejudice; providing requirements for
16 orders dismissing charges with prejudice; providing
17 factors to be considered in determining whether charges
18 should be dismissed with prejudice; providing for
19 determination of whether a defendant is available for
20 trial for purposes of speedy trial provisions; providing
21 for application of provisions to prisoners outside the
22 jurisdiction; providing for applicability when a defendant
23 is charged with both felony and misdemeanor offenses;
24 providing for the effect of appeals; providing for retrial
25 after declaration of a mistrial; providing for application
26 to new or refiled charges after timely nolle prosequi;
27 deleting reference to a rule of the Supreme Court
28 concerning speedy trials; amending s. 985.35, F.S.;

29 providing that adjudicatory hearings for juveniles must be
30 held in accordance with a specified statute relating to
31 speedy trials rather than according to specified court
32 rules; creating s. 985.36, F.S.; providing a time period
33 for juvenile adjudicatory hearings; providing for
34 extensions of time; providing for waiver of speedy trial
35 period; providing for motions for speedy trial; providing
36 for motions for dismissal; providing for dismissal of
37 charges if a juvenile is not brought to trial within the
38 time period prescribed by the court; providing
39 requirements for motions for dismissal; providing
40 limitations on refileing of charges following a dismissal
41 without prejudice; providing requirements for orders
42 dismissing charges with prejudice; providing factors to be
43 considered in determining whether charges should be
44 dismissed with prejudice; providing for determination of
45 whether a juvenile is available for trial for purposes of
46 speedy trial provisions; providing of tolling of speedy
47 trial period during the determination of a juvenile's
48 competency; providing for the effect of a declaration of a
49 mistrial, an appeal, or an order for a new trial;
50 providing for application to new or refiled charges after
51 timely nolle prosequi; repealing Rule 3.191, Florida Rules
52 of Criminal Procedure, relating to speedy trials;
53 providing a contingent effective date.

54
55 WHEREAS, Section 16, Article I of the State Constitution
56 and the Sixth Amendment to the United States Constitution

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57 provide persons accused of crimes a right to speedy trial, and

58 WHEREAS, the United States Supreme Court has explicitly
59 stated that there is "no constitutional basis for holding that
60 the speedy trial right can be quantified into a specified number
61 of days or months." (*Barker v. Wingo*, 407 U.S. 514, 523 (1972)),
62 and

63 WHEREAS, the Legislature finds that there is no basis in
64 the State Constitution or the United States Constitution to
65 permanently and forever discharge a defendant for a crime based
66 solely upon the expiration of strict time limits for criminal
67 prosecutions when no substantive violation of the constitutional
68 right to speedy trial has occurred, and

69 WHEREAS, the Legislature finds that Rule 3.191, Florida
70 Rules of Criminal Procedure, creates time periods for a speedy
71 trial far stricter than necessary and that require courts to
72 dismiss prosecutions against accused criminals who have suffered
73 neither a violation of a constitutional right nor an unfair
74 trial, and

75 WHEREAS, the Legislature finds that Rule 3.191, Florida
76 Rules of Criminal Procedure, is substantive in character by
77 expanding a criminal defendant's right to speedy trial to a
78 right to be forever discharged from his or her crime if not
79 tried within a specific number of days and to attach that right
80 upon a person's arrest even where the state attorney declines to
81 file formal charges pending further investigation, NOW,
82 THEREFORE,

83

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

85
 86 Section 1. Section 918.015, Florida Statutes, is amended
 87 to read:

88 918.015 Right to speedy trial.—

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

91 (2) FINDINGS; INTENT.—The Legislature finds that Rule
 92 3.191, Florida Rules of Criminal Procedure, is substantive in
 93 character in every respect where it compels strict enforcement
 94 of time periods for prosecutions of persons accused of crimes,
 95 where it grants the benefits of its provisions to persons upon
 96 arrest or service of a notice to appear, regardless of whether
 97 formal charges are filed, where it continues application of the
 98 time limitations where the state enters a nolle prosequi of the
 99 charge, and where it operates to circumvent and preclude the
 100 filing for formal charges within the statute of limitations
 101 periods for appropriate offenses. To the extent that these and
 102 all other substantive effects of rules of court regarding the
 103 speedy trial of persons charged with crimes expand, alter, or
 104 enlarge the substantive right to speedy trial, the Legislature
 105 adopts the provisions of this section to govern a defendant's
 106 right to speedy trial. This section shall govern unless the
 107 Supreme Court declares this section or a provision thereof to be
 108 procedural. In the event the Supreme Court adopts a rule of
 109 procedure to replace this section, or any portion of this
 110 section, such rule shall neither abridge, enlarge, or modify the
 111 constitutional right to a speedy trial nor require a dismissal
 112 of the charge with prejudice where no substantive violation of

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113 the constitutional right to a speedy trial has occurred. It is
114 the intent of the Legislature that the principles and findings
115 described in this subsection similarly apply with respect to
116 juveniles charged with delinquent acts and to the provisions of
117 s. 985.36.

118 (3) SPEEDY TRIAL WITHOUT DEMAND.—Except as otherwise
119 provided, and subject to the limitations imposed under
120 subsections (10) and (11), a person charged with a felony by
121 indictment or information, or in the case of a misdemeanor by
122 whatever document constitutes a formal charge, shall be brought
123 to trial within the following time periods:

124 (a) Ninety days after the filing of a misdemeanor;

125 (b) One hundred eighty days after the filing of a first,
126 second, or third degree felony;

127 (c) Two hundred seventy five days after the filing of a
128 first degree felony punishable by imprisonment for a term of
129 years not exceeding life; or

130 (d) Three hundred sixty five days if the crime charged is
131 a capital felony.

132
133 This subsection ceases to apply whenever a motion for demand for
134 speedy trial has been granted under subsection (4) or when the
135 state files a no information indicating its intent not to file
136 formal charges.

137 (4) SPEEDY TRIAL UPON DEMAND.—Except as otherwise provided
138 in this section, and subject to the limitations imposed under
139 subsections (10) and (11), a person charged with a felony by
140 indictment or information, or in the case of a misdemeanor by

141 whatever document constitutes a formal charge, may file a motion
 142 with the trial court for demand for speedy trial.

143 (a) An order granting a motion for demand for speedy trial
 144 requires the defendant to be brought to trial within the
 145 following time periods:

146 1. Sixty days after the filing of a misdemeanor;

147 2. One hundred twenty days after the filing of a first,
 148 second or third degree felony;

149 3. One hundred ninety days after the filing of a first
 150 degree felony punishable by imprisonment for a term of years not
 151 exceeding life; or

152 4. Two hundred seventy five days if the crime charged is a
 153 capital felony.

154 (b) A motion for demand for speedy trial shall be
 155 considered a pleading that the defendant is available for trial,
 156 has diligently investigated the case, and is prepared or will be
 157 prepared for trial within 20 days after filing the motion. If
 158 granted, a motion for demand for speedy trial binds the
 159 defendant and the state. No motion for demand for speedy trial
 160 shall be filed or served unless the defendant has a bona fide
 161 desire to obtain a trial sooner than otherwise might be
 162 provided.

163 (c) A motion for demand shall be granted by the court
 164 unless the court determines:

165 1. No document constituting a formal charge has been filed
 166 with the court;

167 2. The defendant is not or will not be prepared for trial
 168 within 20 days after filing the motion; or

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169 3. The factual circumstances, seriousness, or complexity
170 of the case are such that the applicable time period provided
171 under this paragraph is insufficient to allow the state or
172 defense adequate time to prepare the case for trial.

173 (d) A motion for demand for speedy trial may be refiled
174 after 30 days after a denial of a previous motion for demand for
175 speedy trial.

176 (e) An order granting a motion for a demand for speedy
177 trial may only be vacated with consent of the state or for good
178 cause shown. Good cause for vacating a demand order and granting
179 subsequent requests for continuances on behalf of the defendant
180 thereafter shall not include nonreadiness for trial, except as
181 to matters that may arise after the motion for demand for speedy
182 trial was filed and that reasonably could not have been
183 anticipated by the defendant or counsel for the defendant.

184 (5) EXTENSIONS OF TIME.—Extension of the time periods
185 under subsections (3) and (4) may be granted under the following
186 circumstances:

187 (a) Unexpected illness, unexpected incapacity, or
188 unforeseeable and unavoidable absence of a person whose presence
189 or testimony is uniquely necessary for a full and adequate
190 trial;

191 (b) A showing by the state that the case is so unusual and
192 so complex, because of the number of defendants or the nature of
193 the prosecution or otherwise, that it is unreasonable to expect
194 adequate investigation or preparation within the prescribed time
195 periods;

196 (c) A showing by the state that specific evidence or

197 testimony is not available despite diligent efforts to secure
 198 it, but will become available at a later time;

199 (d) A showing by the defendant or the state of necessity
 200 for delay grounded on developments that could not have been
 201 anticipated and that materially will affect the trial;

202 (e) A showing that a delay is necessary to accommodate a
 203 codefendant, when there is reason not to sever the cases to
 204 proceed promptly with trial of the defendant;

205 (f) A showing by the state that the defendant has caused
 206 major delay or disruption of preparation of proceedings, such as
 207 by preventing the attendance of witnesses or otherwise;

208 (g) Other exceptional circumstances exist which, as a
 209 matter of substantial justice to the defendant or the state or
 210 both, require an extension;

211 (h) The state and defense have signed a stipulation for an
 212 extension;

213 (i) The defendant establishes good cause to grant an
 214 extension without waiving his or her right to speedy trial; or

215 (j) The court determines there exists a reasonable and
 216 necessary period of delay resulting from proceedings including
 217 but not limited to an examination and hearing to determine the
 218 mental competency or physical ability of the defendant to stand
 219 trial, for hearings on pretrial motions, for appeals by the
 220 state, for DNA testing ordered on the defendant's behalf upon
 221 defendant's motion specifying the physical evidence to be tested
 222 under s. 925.12(2), and for trial of other pending criminal
 223 charges against the defendant.

224 (6) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of

225 this section shall be deemed waived by the defendant when any of
 226 the following occurs:

227 (a) A defendant who has not filed a motion for a demand
 228 for speedy trial moves for a continuance.

229 (b) A defendant who has filed a motion for demand for
 230 speedy trial moves for a continuance and the motion is granted.

231 (c) The defendant is unavailable for trial.

232 (d) The defendant agrees to provide substantial assistance
 233 to the state or law enforcement while his or her case is
 234 pending.

235 (e) The state proves by clear and convincing evidence that
 236 the defendant has caused major delay or disruption of
 237 preparation of proceedings, such as by preventing the attendance
 238 of witnesses or otherwise.

239 (7) MOTION FOR SPEEDY TRIAL.—

240 (a) A motion for speedy trial may be filed after the time
 241 periods under subsections (3) or (4), or any period of extension
 242 granted by the court, have expired.

243 (b) For purposes of calculating the time periods of this
 244 section, the filing date of the initial formal charging document
 245 shall be the only event which commences the running of speedy
 246 trial periods except as provided in subsection (10). No later
 247 than 5 days after the date of filing the motion for speedy
 248 trial, the court shall hold a hearing on the motion.

249 (c) A motion for speedy trial shall be granted unless it
 250 is shown that:

251 1. The failure to hold the trial is attributable to the
 252 defendant, a codefendant in the same trial, or their counsel;

- 253 2. The defendant was unavailable for trial;
- 254 3. The applicable time period or extension granted by the
- 255 court has not expired; or
- 256 4. The defendant is not prepared to proceed to trial
- 257 within 10 days after the hearing on the motion for speedy trial.

258

259 If the court finds that none of the reasons set forth in this

260 paragraph exist, it shall grant the motion and order the

261 defendant brought to trial within 10 days unless the court in

262 its discretion authorizes a longer time period of up to 30 days.

263 (d) A defendant not brought to trial within the 10-day

264 period or other time period prescribed by the court, through no

265 fault of the defendant or the defendant's counsel, may file a

266 motion for dismissal under subsection (8). A person will be

267 considered to have been brought to trial if the trial commences

268 within the required time period. For purposes of this paragraph,

269 a trial is considered commenced when the jury panel for that

270 specific trial has been sworn after voir dire examination and

271 selection or, on waiver of a jury trial, when the proceedings

272 begin before the judge.

273 (8) MOTION FOR DISMISSAL.—

274 (a) A defendant whose motion for speedy trial has been

275 granted and who has not been brought to trial pursuant to

276 subsection (7) may file a motion for dismissal of all charges

277 pending before the court and any uncharged crime arising out the

278 same criminal episode as that before the court. A dismissal

279 granted solely due to the failure to bring the defendant to

280 trial before the expiration of the applicable time periods shall

281 be without prejudice. A motion for dismissal with prejudice may
 282 be ordered if the defendant filed a motion for demand for speedy
 283 trial under subsection (4) and such motion was granted, and:

284 1. The length of delay was substantially beyond the
 285 applicable time periods and has prejudiced the defendant in his
 286 or her defense. Prejudice may be established where the defendant
 287 can show by clear and convincing evidence that while outside
 288 applicable time period, or during any extended period authorized
 289 by the court, an essential witness has died or has become
 290 unavailable through no fault of the defendant, the defendant's
 291 counsel, or anyone acting on behalf of the defendant or his or
 292 her counsel. An essential witness means a witness possessing
 293 exculpatory information that cannot be provided by another
 294 witness of comparable credibility, or a witness who is essential
 295 to explain, identify, or introduce admissible evidence the
 296 defendant intended to introduce at trial. Prejudice may also be
 297 established where the defendant can show by clear and convincing
 298 evidence that exculpatory evidence known to the defense during
 299 the applicable time periods has been destroyed, substantially
 300 degraded, lost, or become unavailable through no fault of the
 301 defendant, the defendant's counsel, or anyone acting on behalf
 302 of the defendant or his or her counsel; or

303 2. The delay has otherwise constituted a substantive
 304 violation of the defendant's constitutional right to a speedy
 305 trial.

307 An order granting a dismissal with prejudice under this
 308 paragraph must specify factual findings in support of its

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309 conclusion.

310 (b)1. Charges filed by the state subsequent to a dismissal
311 without prejudice arising out the same criminal episode that was
312 the subject of dismissal may not include a new or enhanced
313 charge that was not previously dismissed. This subparagraph does
314 not prohibit amendment of the charging document as necessary to
315 correct errors or deficiencies which do not add a new charge or
316 alter the severity or substance of the charged offense.

317 2. If a nolle prosequi is filed after the expiration of
318 the applicable time period under subsection (3) or subsection
319 (4) or provided in any court-prescribed extension, charges based
320 on the same criminal episode filed subsequent to such nolle
321 prosequi may not include any new or enhanced charge that was not
322 previously the subject of the nolle prosequi. This subparagraph
323 does not prohibit amendment of the charging document as
324 necessary to correct errors or deficiencies which do not add a
325 new charge or alter the severity or substance of the charged
326 offense.

327 3. Refiled charges arising out of the same criminal
328 episode filed subsequent to a dismissal without prejudice or
329 subsequent to a nolle prosequi entered as described in
330 subparagraph 2. must be commenced within 60 days for a
331 misdemeanor offense and 120 days for a felony offense. If the
332 state fails to bring the defendant to trial on such refiled
333 charges as required under this subparagraph through no fault of
334 the defendant, the defendant's counsel, or anyone acting on
335 behalf of the defendant or his or her counsel, the court may in
336 its discretion dismiss the charge without prejudice or with

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337 prejudice if the court finds good cause exists that warrants
338 permanent dismissal of the charge based on consideration of the
339 following factors:

- 340 a. The length of the delay.
341 b. The circumstances and reason for the delay.
342 c. The seriousness of the charge.
343 d. The degree of prejudice to the defense.
344

345 An order dismissing a charge with prejudice under this
346 subparagraph must be in writing and supported by facts which
347 support findings that the length of the delay was unreasonable
348 and the prejudice to the defendant diminished his or her defense
349 in a material way.

350 (9) AVAILABILITY FOR TRIAL.—A defendant is unavailable for
351 trial if the defendant or his or her counsel fails to attend a
352 proceeding at which either's presence is required by this
353 section or the defendant or his or her counsel is not ready for
354 trial on the date trial is scheduled. No presumption of
355 unavailability attaches, but if the state objects to a motion
356 for speedy trial and presents any evidence tending to show the
357 defendant's unavailability, the defendant must establish, by
358 competent proof, availability during the applicable time period.

359 (10) PRISONERS OUTSIDE JURISDICTION.—A person who is in
360 federal custody or incarcerated in a jail or correctional
361 institution outside the jurisdiction of this state or a
362 subdivision thereof and who is charged with a crime by
363 indictment or information issued or filed under the laws of this
364 state is not entitled to the benefit of this section until that

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365 person returns or is returned to the jurisdiction of the court
366 within which the charge in this state is pending and until
367 written notice of the person's return is filed with the court
368 and served on the prosecutor. For these persons, the time period
369 under subsection (3) commences on the date the last act required
370 under this subsection occurs and the time period under
371 subsection (4) commences on the date an order granting a motion
372 for demand for speedy trial is entered following the completion
373 of all acts required under this subsection. If the acts required
374 under this subsection do not precede the issuance of an order
375 granting a motion for demand for speedy trial, the order
376 granting the motion for demand for speedy trial is a nullity.

377 (11) CONSOLIDATION OF FELONY AND MISDEMEANOR.—When a
378 felony and a misdemeanor are consolidated for disposition in
379 circuit court, the misdemeanor shall be governed by the time
380 period applicable to the felony.

381 (12) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
382 person who is to be tried again or whose trial has been delayed
383 by an appeal by the state or the defendant shall be brought to
384 trial within 60 days in the case of a misdemeanor and within 120
385 days in the case of a felony after the date of declaration of a
386 mistrial by the trial court, the date of an order by the trial
387 court granting a new trial, the date of an order by the trial
388 court granting a motion in arrest of judgment, or the date of
389 receipt by the trial court of a mandate, order, or notice of
390 whatever form from a reviewing court that makes possible a new
391 trial for the defendant, whichever is last in time. If a
392 defendant is not brought to trial within the prescribed time

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393 period, the defendant may file a motion for speedy trial under
 394 subsection (7).

395 (13) PERIOD FOR NEW OR REFILED CHARGES AFTER TIMELY NOLLE
 396 PROSEQUI.—This section does not prohibit the state from filing
 397 any criminal charge subsequent to the entry of a no information
 398 at any time within the statute of limitations period for such
 399 offense. This section does not prohibit the refiling of any
 400 original charges or any new charges subsequent to the entry of a
 401 nolle prosequi when such charges are filed within the statute of
 402 limitations period for such offense, if the nolle prosequi was
 403 filed prior to the expiration of the time periods provided in
 404 subsection (3) or subsection (4) or, in the case of an extension
 405 granted by the court, prior to the expiration of the court's
 406 extended time period. Filing or refiling of charges after a
 407 nolle prosequi prior to the expiration of the applicable time
 408 period on the previous charge shall restart the applicable
 409 speedy trial time period from the same day at which it ceased
 410 due to the filing of the nolle prosequi. The speedy trial period
 411 for such new or refiled charges shall be the balance of days
 412 remaining on the speedy trial period of the charge or charges
 413 that were the subject of the nolle prosequi ~~The Supreme Court~~
 414 ~~shall, by rule of said court, provide procedures through which~~
 415 ~~the right to a speedy trial as guaranteed by subsection (1) and~~
 416 ~~by s. 16, Art. I of the State Constitution, shall be realized.~~

417 Section 2. Subsection (1) of section 985.35, Florida
 418 Statutes, is amended to read:

419 985.35 Adjudicatory hearings; withheld adjudications;
 420 orders of adjudication.—

421 (1) The adjudicatory hearing must be held as soon as
 422 practicable after the petition alleging that a child has
 423 committed a delinquent act or violation of law is filed and in
 424 accordance with s. 985.36 ~~the Florida Rules of Juvenile~~
 425 ~~Procedure~~; but reasonable delay for the purpose of
 426 investigation, discovery, or procuring counsel or witnesses
 427 shall be granted. If the child is being detained, the time
 428 limitations in s. 985.26(2) and (3) apply.

429 Section 3. Section 985.36, Florida Statutes, is created to
 430 read:

431 985.36 Juvenile right to speedy trial.-

432 (1) TIME.-If a petition has been filed alleging a juvenile
 433 to have committed a delinquent act, the juvenile shall be
 434 brought to an adjudicatory hearing within 90 days after the
 435 earlier of the following:

- 436 (a) The date the juvenile was taken into custody; or
- 437 (b) The date of service of the summons that is issued
 438 when the petition is filed.

439 (2) EXTENSIONS OF TIME.-Extension of the time period under
 440 subsection (1) may be granted under the following circumstances:

- 441 (a) Unexpected illness, unexpected incapacity, or
 442 unforeseeable and unavoidable absence of a person whose presence
 443 or testimony is uniquely necessary for a full and adequate
 444 trial;
- 445 (b) A showing by the state that the case is so unusual and
 446 so complex, because of the number of persons charged or the
 447 nature of the prosecution or otherwise, that it is unreasonable
 448 to expect adequate investigation or preparation within the

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449 prescribed time period;

450 (c) A showing by the state that specific evidence or
451 testimony is not available despite diligent efforts to secure
452 it, but will become available at a later time;

453 (d) A showing by the defense or the state of necessity for
454 delay grounded on developments that could not have been
455 anticipated and that materially will affect the trial;

456 (e) A showing that a delay is necessary to accommodate a
457 codefendant, when there is reason not to sever the cases to
458 proceed promptly with trial of the juvenile;

459 (f) A showing by the state that the juvenile has caused
460 major delay or disruption of preparation of proceedings, such as
461 by preventing the attendance of witnesses or otherwise.

462 (g) Other exceptional circumstances exist which, as a
463 matter of substantial justice to the juvenile or the state or
464 both, require an extension;

465 (h) The state and defense have signed a stipulation for an
466 extension;

467 (i) The juvenile establishes good cause to grant an
468 extension without waiving his or her right to speedy trial; or

469 (j) The court determines there exists a reasonable and
470 necessary period of delay resulting from proceedings including
471 but not limited to an examination and hearing to determine the
472 mental competency or physical ability of the juvenile to stand
473 for the adjudicatory hearing, for hearings on pretrial motions,
474 for appeals by the state, and for adjudicatory hearings of other
475 pending charges against the juvenile.

476 (3) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of

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477 this section shall be deemed waived by the juvenile when any of
478 the following occurs:

479 (a) The juvenile moves for a continuance.

480 (b) The juvenile is unavailable for trial.

481 (c) The juvenile agrees to provide substantial assistance
482 to the state or law enforcement while his or her case is
483 pending.

484 (d) The state proves by clear and convincing evidence that
485 the juvenile has caused major delay or disruption of preparation
486 of proceedings, such as by preventing the attendance of
487 witnesses or otherwise.

488 (4) MOTION FOR SPEEDY TRIAL.—A motion for speedy trial may
489 be filed after the time period under subsection (1) or any
490 period of extension granted by the court has expired. No later
491 than 5 days after the date of filing the motion for speedy
492 trial, the court shall hold a hearing on the motion. A motion
493 for speedy trial shall be granted unless it is shown that:

494 (a) The failure to hold the adjudicatory hearing is
495 attributable to the juvenile, a codefendant in the same case, or
496 their counsel;

497 (b) The juvenile was unavailable for trial;

498 (c) The time period or extension granted by the court has
499 not expired; or

500 (d) The juvenile is not prepared to proceed to trial
501 within 10 days after the hearing on the motion for speedy trial.

502

503 If the court finds that none of the reasons set forth in this
504 subsection exist, it shall grant the motion and order the

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505 juvenile to be brought to an adjudicatory hearing within 10
506 days. A juvenile not brought to his or her adjudicatory hearing
507 within the 10-day period, through no fault of the juvenile or
508 the juvenile's counsel, may file a motion for dismissal under
509 subsection (5). A juvenile will be considered to have been
510 brought to his or her adjudicatory hearing if the hearing
511 commences within the required time period. For purposes of this
512 subsection, the adjudicatory hearing is considered commenced
513 when the proceedings begin before the judge.

514 (5) MOTION FOR DISMISSAL.—

515 (a) A juvenile whose motion for speedy trial has been
516 granted and who has not been brought to an adjudicatory hearing
517 under subsection (4) may file a motion for dismissal of the
518 petition pending before the court and any uncharged delinquent
519 act arising out the same criminal episode as that before the
520 court. If the state failed to bring the juvenile to an
521 adjudicatory hearing as required under subsection (4) through no
522 fault of the juvenile or the juvenile's counsel, the court may
523 in its discretion dismiss the charge without prejudice or with
524 prejudice if the court finds good cause exists which warrants
525 permanent dismissal of the charge based on consideration of the
526 following factors:

- 527 1. The length of the delay.
- 528 2. The circumstances and reason for the delay.
- 529 3. The seriousness of the charge.
- 530 4. The degree of prejudice to the defense.

531
532 An order dismissing a charge with prejudice under this paragraph

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533 must be in writing and supported by facts which support findings
534 that the length of the delay was unreasonable and the prejudice
535 to the defendant diminished his or her defense in a material
536 way.

537 (b)1. Charges filed by the state subsequent to a dismissal
538 without prejudice arising out the same criminal episode that was
539 the subject of dismissal may not include any new or enhanced
540 charge that was not previously dismissed. This subsection does
541 not prohibit amendment of the petition as necessary to correct
542 errors or deficiencies which do not add a new charge or alter
543 the severity or substance of the charged offense.

544 2. If a nolle prosequi is filed after the expiration of
545 the time period specified in subsection (1), charges based on
546 the same criminal episode filed subsequent to such nolle
547 prosequi may not include any new or enhanced charge that was not
548 previously the subject of the nolle prosequi. This subsection
549 does not prohibit amendment of the petition as necessary to
550 correct errors or deficiencies which do not add a new charge or
551 alter the severity or substance of the charged offense.

552 3. Refiled charges arising out the same criminal episode
553 filed subsequent to a dismissal without prejudice or subsequent
554 to a nolle prosequi entered as described in subparagraph 2. must
555 be commenced within 60 days. If the state fails to bring the
556 juvenile to trial on such refiled charges as required under this
557 subparagraph through no fault of the juvenile or juvenile's
558 counsel, the court may in its discretion dismiss the charge
559 without prejudice or with prejudice if the court finds good
560 cause exists that warrants permanent dismissal of the charge

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561 based on consideration of the following factors:

562 a. The length of the delay.

563 b. The circumstances and reason for the delay.

564 c. The seriousness of the charge.

565 d. The degree of prejudice to the defense.

566

567 An order dismissing a petition with prejudice under this
568 paragraph must be in writing and supported by facts which
569 support findings that the length of the delay was unreasonable
570 and the prejudice to the juvenile diminished his or her defense
571 in a material way.

572 (6) AVAILABILITY FOR TRIAL.—A juvenile is unavailable for
573 trial if the juvenile or his or her counsel fails to attend a
574 proceeding at which either's presence is required by this
575 section, or the juvenile or his or her counsel is not ready for
576 the adjudicatory hearing on the date it is scheduled. No
577 presumption of unavailability attaches, but if the state objects
578 to a motion for speedy trial and presents any evidence tending
579 to show the juvenile's unavailability, the juvenile must
580 establish, by competent proof, availability during the time
581 period.

582 (7) INCOMPETENCY OF JUVENILE.—Upon the filing of a motion
583 to declare the juvenile incompetent, the speedy trial period
584 shall be tolled until a subsequent finding of the court that the
585 child is competent to proceed.

586 (8) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
587 juvenile who is to have another adjudicatory hearing or whose
588 adjudicatory hearing has been delayed by an appeal by the state

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589 or the defense shall be brought to an adjudicatory hearing
590 within 60 days after the date of declaration of a mistrial by
591 the trial court, the date of an order by the trial court
592 granting a new trial, the date of an order by the trial court
593 granting a motion in arrest of judgment, or the date of receipt
594 by the trial court of a mandate, order, or notice of whatever
595 form from a reviewing court that makes possible a new trial for
596 the respondent, whichever is last in time. If a juvenile is not
597 brought to an adjudicatory hearing within the prescribed time
598 period, the juvenile may file a motion for speedy trial under
599 subsection (5).

600 (9) PERIOD FOR NEW OR REFILED CHARGES AFTER TIMELY NOLLE
601 PROSEQUI.—This section does not prohibit the state from filing a
602 petition subsequent to the entry of a no petition at any time
603 within the statute of limitations period for such offense if the
604 person who is the subject of the petition remains under the
605 jurisdiction of the juvenile court the day a new petition is
606 filed. This section does not prohibit the refileing of any
607 original charges or any new charges subsequent to the entry of a
608 nolle prosequi when such charges are filed within the statute of
609 limitations period for such offense, if the nolle prosequi was
610 filed prior to the expiration of the time period provided in
611 subsection (1) and if the person who is the subject of the new
612 charges in the petition remains under the jurisdiction of the
613 juvenile court the day a new petition is filed. Filing or
614 refiling of charges after a nolle prosequi prior to the
615 expiration of the applicable time period on the previous charge
616 shall restart the speedy trial time period from the same day at

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617 which it ceased due to the filing of the nolle prosequi. The
618 speedy trial period for such new or refiled charges shall be the
619 balance of days remaining on the speedy trial period of the
620 charge or charges that were the subject of the nolle prosequi.

621 Section 4. Rule 3.191, Florida Rules of Criminal
622 Procedure, is repealed.

623 Section 5. This act shall take effect October 1, 2010, but
624 section 4 of this act shall take effect only if this act is
625 enacted by a two-thirds vote of the membership of each house of
626 the Legislature.