

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 request for application
6 of the speedy trial time periods; specifying periods for
7 commencement of a trial when a request for application of
8 speedy trial periods is made; providing grounds for denial
9 of such a motion; providing for vacation of such a motion
10 upon good cause; providing for extensions of time;
11 providing for waiver of speedy trial periods; providing
12 requirements for a speedy trial motion; providing for
13 dismissal of charges if a defendant is not brought to
14 trial within the time period prescribed by the court;
15 providing requirements for motions for dismissal;
16 providing limitations on refileing of charges following a
17 dismissal without prejudice; providing for determination
18 of whether a defendant is available for trial for purposes
19 of speedy trial provisions; providing for application of
20 provisions to prisoners outside the jurisdiction;
21 providing for applicability when multiple counts are
22 charged; providing for applicability when a defendant is
23 charged with more than one felony; providing for the
24 effect of appeals; providing for retrial after declaration
25 of a mistrial; providing for application to new or refiled
26 charges after entry of certain entries; deleting reference
27 to a rule of the Supreme Court concerning speedy trials;
28 amending s. 985.35, F.S.; providing that adjudicatory

29 | hearings for juveniles must be held in accordance with a
30 | specified statute relating to speedy trials rather than
31 | according to specified court rules; creating s. 985.36,
32 | F.S.; providing a time period for juvenile adjudicatory
33 | hearings; providing for extensions of time; providing for
34 | waiver of speedy trial period; providing for motions for
35 | speedy trial; providing for motions for dismissal;
36 | providing for dismissal of charges if a juvenile is not
37 | brought to trial within the time period prescribed by the
38 | court; providing requirements for motions for dismissal;
39 | providing limitations on refileing of charges following a
40 | dismissal without prejudice; providing requirements for
41 | orders dismissing charges with prejudice; providing
42 | factors to be considered in determining whether charges
43 | should be dismissed with prejudice; providing for
44 | determination of whether a juvenile is available for trial
45 | for purposes of speedy trial provisions; providing of
46 | tolling of speedy trial period during the determination of
47 | a juvenile's competency; providing for the effect of a
48 | declaration of a mistrial, an appeal, or an order for a
49 | new trial; providing for application to new or refiled
50 | charges after timely nolle prosequi; repealing Rule 3.191,
51 | Florida Rules of Criminal Procedure, relating to speedy
52 | trials; repealing Rule 8.090, Florida Rules of Juvenile
53 | Procedure, relating to speedy trials in juvenile
54 | proceedings; providing a contingent effective date.

55 |
56 | Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Section 918.015, Florida Statutes, is amended
59 to read:

60 918.015 Right to speedy trial.—

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

63 (2) FINDINGS; INTENT.—The Legislature finds that Rule
64 3.191, Florida Rules of Criminal Procedure, is substantive in
65 character in every respect where it compels strict enforcement
66 of time periods for prosecutions of persons accused of crimes,
67 where it grants the benefits of its provisions to persons upon
68 arrest or service of a notice to appear, regardless of whether
69 formal charges are filed, where it continues application of the
70 time limitations where the state enters a nolle prosequi of the
71 charge, and where it operates to circumvent and preclude the
72 filing for formal charges within the statute of limitations
73 periods for appropriate offenses. To the extent that these and
74 all other substantive effects of rules of court regarding the
75 speedy trial of persons charged with crimes expand, alter, or
76 enlarge the constitutional right to speedy trial, the
77 Legislature adopts the provisions of this section to govern a
78 defendant's right to speedy trial. This section shall govern
79 unless the Supreme Court declares this section or a provision
80 thereof to be procedural. To the extent any provision of this
81 section is found procedural, all remaining provisions shall
82 supersede any court rule in conflict with such remaining
83 substantive provisions. If the Supreme Court adopts a rule of
84 procedure to replace this section, or any portion of this

85 section, such rule shall neither abridge, enlarge, or modify the
 86 constitutional right to a speedy trial nor require a dismissal
 87 of the charge with prejudice where no substantive violation of
 88 the constitutional right to a speedy trial has occurred. It is
 89 the intent of the Legislature that the principles and findings
 90 described in this subsection similarly apply with respect to
 91 juveniles charged with delinquent acts and to the provisions of
 92 s. 985.36. ~~The Supreme Court shall, by rule of said court,~~
 93 ~~provide procedures through which the right to a speedy trial as~~
 94 ~~guaranteed by subsection (1) and by s. 16, Art. I of the State~~
 95 ~~Constitution, shall be realized.~~

96 (3) SPEEDY TRIAL GENERAL PROVISIONS.—Except as otherwise
 97 provided, and subject to the limitations imposed under
 98 subsections (10) and (11), a person charged with a felony by
 99 indictment or information, or in the case of a misdemeanor by
 100 whatever document constitutes a formal charge, shall be brought
 101 to trial within the following time periods:

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

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

105 (c) Two hundred seventy-five days after the filing of a
 106 felony of the first degree punishable by imprisonment for a term
 107 of years not exceeding life or a life felony; or

108 (d) Three hundred sixty-five days after the filing of a
 109 capital felony.

110
 111 This subsection does not apply whenever a motion requesting
 112 application of the speedy trial time periods has been granted

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113 under subsection (4) or when the state files a no information
114 indicating its intent not to file formal charges.

115 (4) REQUEST FOR SPEEDY TRIAL TIME PERIODS.—Except as
116 otherwise provided in this section, and subject to the
117 limitations imposed under subsections (10) and (11), a person
118 charged with a felony by indictment or information, or in the
119 case of a misdemeanor by whatever document constitutes a formal
120 charge, may file a motion with the trial court requesting
121 application of the speedy trial time periods under this
122 subsection.

123 (a) An order granting a motion under this subsection
124 requires the defendant to be brought to trial within the
125 following time periods:

126 1. Sixty days after the date of an order granting the
127 motion for a misdemeanor;

128 2. One hundred twenty days after the date of an order
129 granting the motion for a felony of the first, second, or third
130 degree;

131 3. One hundred ninety days after the date of an order
132 granting the motion for a felony of the first degree punishable
133 by imprisonment for a term of years not exceeding life or a life
134 felony; or

135 4. Two hundred seventy-five days after the date of an
136 order granting the motion for a capital felony.

137 (b) A motion requesting application of the speedy trial
138 time periods shall be considered a pleading that the defendant
139 is available for trial, has diligently investigated the case,
140 and is prepared or will be prepared for trial within 20 days

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141 after filing the motion. If granted, the motion binds the
142 defendant and the state. No motion requesting application of the
143 speedy trial time periods shall be filed or served unless the
144 defendant has a bona fide desire to obtain a trial sooner than
145 otherwise might be provided.

146 (c) A motion requesting application of the speedy trial
147 time periods shall be granted by the court unless the court
148 determines:

149 1. No document constituting a formal charge has been filed
150 with the court;

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

153 3. The factual circumstances, seriousness, or complexity
154 of the case is such that the applicable time period provided
155 under this subsection is insufficient to allow the state or
156 defense adequate time to prepare the case for trial.

157 (d) A motion requesting application of the speedy trial
158 time periods may be refiled not less than 30 days after a denial
159 of a previous motion requesting application of the speedy trial
160 time periods.

161 (e) An order granting a motion requesting application of
162 the speedy trial time periods may only be vacated with consent
163 of the state or for good cause shown. Good cause for vacating an
164 order granted under this subsection and granting subsequent
165 requests for continuances on behalf of the defendant thereafter
166 shall not include nonreadiness for trial, except as to matters
167 that may arise after the motion requesting application of the
168 speedy trial time periods was filed and that reasonably could

169 not have been anticipated by the defendant or counsel for the
170 defendant.

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

174 (a) Unexpected illness, unexpected incapacity, or
175 unforeseeable and unavoidable absence of a person whose presence
176 or testimony is uniquely necessary for a full and adequate
177 trial;

178 (b) A showing by the state that the case is so unusual and
179 so complex, because of the number of defendants or the nature of
180 the prosecution or otherwise, that it is unreasonable to expect
181 adequate investigation or preparation within the prescribed time
182 periods;

183 (c) A showing by the state that specific evidence or
184 testimony is not available despite diligent efforts to secure
185 it, but will become available within a reasonable time;

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

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

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

195 (g) Other exceptional circumstances exist which, as a
196 matter of substantial justice to the defendant or the state or

197 both, require an extension;

198 (h) The state and defense have signed a stipulation for an
 199 extension;

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

202 (j) The court determines there exists a reasonable and
 203 necessary period of delay resulting from proceedings including,
 204 but not limited to:

205 1. An examination and hearing to determine the mental
 206 competency or physical ability of the defendant to stand trial.

207 2. Hearings on pretrial motions.

208 3. Appeals by the state.

209 4. Review by the state under extraordinary writ.

210 5. DNA testing ordered on the defendant's behalf upon
 211 defendant's motion specifying the physical evidence to be tested
 212 under s. 925.12(2).

213 6. Trial of other pending criminal charges against the
 214 defendant.

215 (6) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of
 216 this section shall be deemed waived by the defendant when any of
 217 the following occurs:

218 (a) A defendant who has not filed a motion requesting
 219 application of the speedy trial time periods under subsection
 220 (4) moves for a continuance.

221 (b) A defendant who has filed a motion requesting
 222 application of the speedy trial time periods under subsection
 223 (4) moves for a continuance and the motion is granted.

224 (c) The defendant is unavailable for trial.

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225 (d) The defendant agrees to provide substantial assistance
226 to the state or law enforcement while his or her case is
227 pending.

228 (e) The state proves by clear and convincing evidence that
229 the defendant has caused major delay or disruption of
230 preparation of proceedings, such as preventing the attendance of
231 witnesses or otherwise.

232 (7) MOTION FOR SPEEDY TRIAL.—

233 (a) A motion for speedy trial may be filed after the
234 applicable time period under subsection (3) or subsection (4),
235 or any period of extension granted by the court, has expired.

236 (b) For purposes of calculating the time periods of this
237 section, the filing date of the initial formal charging document
238 shall be the only event which commences the running of speedy
239 trial periods except as provided in subsections (4) and (10). If
240 an information or indictment is filed in lieu of charges
241 initially brought by citation, notice to appear, or any other
242 document that serves as a charging document, the time period
243 shall commence from the date of filing of the citation, notice
244 to appear, or other document serving as a charging document, but
245 the applicable time period shall be the period that adheres to
246 the charge as filed by information or indictment. No later than
247 5 days after the date of filing the motion for speedy trial, the
248 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 the counsel of

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

259
 260 If the court finds that none of the reasons set forth in this
 261 paragraph exist, it shall grant the motion and order the
 262 defendant brought to trial within 10 days unless the court in
 263 its discretion authorizes a longer time period of up to 30 days.

264 (d) A defendant not brought to trial within the 10-day
 265 period or other time period prescribed by the court, through no
 266 fault of the defendant or the defendant's counsel, may file a
 267 motion for dismissal under subsection (8). A person shall be
 268 considered to have been brought to trial if the trial commences
 269 within the required time period. For purposes of this paragraph,
 270 a trial is considered commenced when the jury panel for that
 271 specific trial has been sworn after voir dire examination and
 272 selection or, on waiver of a jury trial, when the proceedings
 273 begin before the judge.

274 (8) MOTION FOR DISMISSAL.—

275 (a) A defendant whose motion for speedy trial has been
 276 granted and who has not been brought to trial pursuant to
 277 subsection (7) may file a motion for dismissal of all charges
 278 and of any uncharged crime arising out the same criminal
 279 episode. A dismissal granted solely due to the failure to bring
 280 the defendant to trial before the expiration of the applicable

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

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

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

308

309 An order granting a dismissal with prejudice under this
310 paragraph must specify factual findings in support of its
311 conclusion.

312 (b)1. Charges filed by the state after a dismissal without
313 prejudice arising out the same criminal episode that was the
314 subject of dismissal may not include a new charge or any charge
315 of a higher degree that was not previously dismissed. This
316 subparagraph does not prohibit amendment of the charging
317 document as necessary to correct errors or deficiencies which do
318 not add a new charge or increase the degree of severity of a
319 charged offense.

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

330 3. A trial on refiled charges arising out of the same
331 criminal episode filed after a dismissal without prejudice or
332 after a nolle prosequi entered as described in subparagraph 2.
333 must be commenced within 60 days for a misdemeanor offense and
334 120 days for a felony offense. If the state fails to bring the
335 defendant to trial on such refiled charges as required under
336 this subparagraph through no fault of the defendant, the

337 defendant's counsel, or anyone acting on behalf of the defendant
338 or his or her counsel, the court shall dismiss the charges with
339 prejudice.

340 (c) The state may appeal a dismissal with prejudice.

341 (9) AVAILABILITY FOR TRIAL.—A defendant is unavailable for
342 trial if the defendant or his or her counsel fails to attend a
343 proceeding at which either's presence is required by this
344 section or the defendant or his or her counsel is not ready for
345 trial on the date trial is scheduled. No presumption of
346 unavailability attaches, but if the state objects to a motion
347 for speedy trial and presents any evidence tending to show the
348 defendant's unavailability, the defendant must establish, by
349 competent proof, availability during the applicable time period.

350 (10) PRISONERS OUTSIDE JURISDICTION.—A person who is in
351 federal custody or incarcerated in a jail or correctional
352 institution outside the jurisdiction of this state or a
353 subdivision thereof is not entitled to the benefit of this
354 section until that person is returned to the jurisdiction of the
355 court in this state within which a charge is pending or within
356 which a charge is to be filed upon such person's return and
357 until written notice of the person's return is filed with the
358 court and served on the prosecutor. For such a person, the time
359 period under subsection (3) commences on the date the last act
360 required under this subsection occurs and the time period under
361 subsection (4) commences on the date an order granting a motion
362 requesting application of the speedy trial time periods is
363 entered following the completion of all acts required under this
364 subsection. If the acts required under this subsection do not

365 precede the issuance of an order granting a motion requesting
 366 application of the speedy trial time periods, the order granting
 367 the motion is a nullity.

368 (11) APPLICABILITY OF TIME PERIODS.—When multiple counts
 369 are charged, the applicable time period is the period applicable
 370 to the highest degree of offense.

371 (12) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
 372 person who is to be tried again or whose trial has been delayed
 373 by an appeal by the state or the defendant shall be brought to
 374 trial within 60 days in the case of a misdemeanor and within 120
 375 days in the case of a felony after the date of declaration of a
 376 mistrial by the trial court, the date of an order by the trial
 377 court granting a new trial, the date of an order by the trial
 378 court granting a motion in arrest of judgment, or the date of
 379 receipt by the trial court of a mandate, order, or notice of
 380 whatever form from a reviewing court that makes possible a new
 381 trial for the defendant, whichever is last in time. If a
 382 defendant is not brought to trial within the prescribed time
 383 period, the defendant may file a motion for speedy trial under
 384 subsection (7).

385 (13) PERIOD FOR NEW OR REFILED CHARGES AFTER NO
 386 INFORMATION OR NO TRUE BILL OR AFTER A TIMELY NOLLE PROSEQUI.—
 387 This section does not prohibit the state from filing any
 388 criminal charge after the entry of a no information or no true
 389 bill at any time within the statute of limitations period for
 390 such offense. This section does not prohibit the refileing of any
 391 original charges or any new charges after the entry of a nolle
 392 prosequi when such charges are filed within the statute of

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393 limitations period for such offense, if the nolle prosequi was
 394 filed before the expiration of the applicable time period under
 395 subsection (3) or subsection (4) or, in the case of an extension
 396 granted by the court, before the expiration of the court's
 397 extended time period. The speedy trial period for new or refiled
 398 charges shall be the balance of days remaining on the speedy
 399 trial period of the charge or charges that were the subject of
 400 the nolle prosequi or 60 days for a misdemeanor offense or 120
 401 days for a felony offense, whichever is greater. If the state
 402 fails to bring the defendant to trial on such refiled charges
 403 within the time periods provided under this subsection through
 404 no fault of the defendant, the defendant's counsel, or anyone
 405 acting on behalf of the defendant or his or her counsel, the
 406 court shall dismiss the charges with prejudice.

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

409 985.35 Adjudicatory hearings; withheld adjudications;
 410 orders of adjudication.—

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

419 Section 3. Section 985.36, Florida Statutes, is created to
 420 read:

421 985.36 Juvenile right to speedy trial.-

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

426 (a) The date the juvenile was taken into custody; or

427 (b) The date of service of the summons that is issued
 428 when the petition is filed.

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

431 (a) Unexpected illness, unexpected incapacity, or
 432 unforeseeable and unavoidable absence of a person whose presence
 433 or testimony is uniquely necessary for a full and adequate
 434 trial;

435 (b) A showing by the state that the case is so unusual and
 436 so complex, because of the number of persons charged or the
 437 nature of the prosecution or otherwise, that it is unreasonable
 438 to expect adequate investigation or preparation within the
 439 prescribed time period;

440 (c) A showing by the state that specific evidence or
 441 testimony is not available despite diligent efforts to secure
 442 it, but will become available within a reasonable time;

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

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

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449 (f) A showing by the state that the juvenile has caused
450 major delay or disruption of preparation of proceedings, such as
451 by preventing the attendance of witnesses or otherwise;

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

455 (h) The state and defense have signed a stipulation for an
456 extension;

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

459 (j) The court determines there exists a reasonable and
460 necessary period of delay resulting from proceedings including,
461 but not limited to:

462 1. An examination and hearing to determine the mental
463 competency or physical ability of the juvenile to stand for the
464 adjudicatory hearing.

465 2. Hearings on pretrial motions.

466 3. Appeals by the state.

467 4. Review by the state under extraordinary writ.

468 5. Adjudicatory hearings of other pending charges against
469 the juvenile.

470 (3) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of
471 this section shall be deemed waived by the juvenile when any of
472 the following occurs:

473 (a) The juvenile moves for a continuance.

474 (b) The juvenile is unavailable for trial.

475 (c) The juvenile agrees to provide substantial assistance
476 to the state or law enforcement while his or her case is

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477 pending.

478 (d) The state proves by clear and convincing evidence that
479 the juvenile has caused major delay or disruption of preparation
480 of proceedings, such as by preventing the attendance of
481 witnesses or otherwise.

482 (4) MOTION FOR SPEEDY TRIAL.—

483 (a) A motion for speedy trial may be filed after the time
484 period under subsection (1) or any period of extension granted
485 by the court has expired.

486 (b) No later than 5 days after the date of filing the
487 motion for speedy trial, the court shall hold a hearing on the
488 motion.

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

491 1. The failure to hold the adjudicatory hearing is
492 attributable to the juvenile, a codefendant in the same case, or
493 the counsel of either;

494 2. The juvenile was unavailable for trial;

495 3. The time period or extension granted by the court has
496 not expired; or

497 4. The juvenile is not prepared to proceed to trial within
498 10 days after the hearing on the motion for speedy trial.

499
500 If the court finds that none of the reasons set forth in this
501 paragraph exist, it shall grant the motion and order the
502 juvenile to be brought to an adjudicatory hearing within 10
503 days.

504 (d) A juvenile not brought to his or her adjudicatory

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505 hearing within the 10-day period, through no fault of the
506 juvenile or the juvenile's counsel, may file a motion for
507 dismissal under subsection (5). A juvenile shall be considered
508 to have been brought to his or her adjudicatory hearing if the
509 hearing commences within the required time period. For purposes
510 of this paragraph, the adjudicatory hearing is considered
511 commenced when the proceedings begin before the judge.

512 (5) MOTION FOR DISMISSAL.—

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

- 524 1. The length of the delay.
- 525 2. The circumstances and reason for the delay.
- 526 3. The seriousness of the charge.
- 527 4. The degree of prejudice to the defense.

528
529 An order dismissing a petition with prejudice under this
530 paragraph must be in writing and supported by facts which
531 support a finding that the length of the delay was unreasonable
532 and that the prejudice to the juvenile diminished his or her

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533 defense in a material way.

534 (b)1. Charges filed by the state after a dismissal without
535 prejudice arising out the same criminal episode that was the
536 subject of dismissal may not include any new charge or any
537 charge of a higher degree that was not previously dismissed.
538 This subparagraph does not prohibit amendment of the petition as
539 necessary to correct errors or deficiencies which do not add a
540 new charge or increase the degree of severity of a charged
541 offense.

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

551 3. An adjudicatory hearing on refiled charges arising out
552 the same criminal episode filed after a dismissal without
553 prejudice or after a nolle prosequi entered as described in
554 subparagraph 2. must be commenced within 60 days. If the state
555 fails to bring the juvenile to an adjudicatory hearing on such
556 refiled charges as required under this subparagraph through no
557 fault of the juvenile or juvenile's counsel, the court shall
558 dismiss the charges with prejudice.

559 (c) The state may appeal a dismissal with prejudice.

560 (6) AVAILABILITY FOR TRIAL.—A juvenile is unavailable for

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561 trial if the juvenile or his or her counsel fails to attend a
562 proceeding at which either's presence is required by this
563 section or the juvenile or his or her counsel is not ready for
564 the adjudicatory hearing on the date it is scheduled. No
565 presumption of unavailability attaches, but if the state objects
566 to a motion for speedy trial and presents any evidence tending
567 to show the juvenile's unavailability, the juvenile must
568 establish, by competent proof, availability during the time
569 period.

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

574 (8) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
575 juvenile who is to have another adjudicatory hearing or whose
576 adjudicatory hearing has been delayed by an appeal by the state
577 or the defense shall be brought to an adjudicatory hearing
578 within 60 days after the date of declaration of a mistrial by
579 the trial court, the date of an order by the trial court
580 granting a new trial, the date of an order by the trial court
581 granting a motion in arrest of judgment, or the date of receipt
582 by the trial court of a mandate, order, or notice of whatever
583 form from a reviewing court that makes possible a new trial for
584 the respondent, whichever is last in time. If a juvenile is not
585 brought to an adjudicatory hearing within the prescribed time
586 period, the juvenile may file a motion for speedy trial under
587 subsection (5).

588 (9) PERIOD FOR NEW OR REFILED CHARGES AFTER NO PETITION OR

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589 AFTER TIMELY NOLLE PROSEQUI.—This section does not prohibit the
590 state from filing a petition after the entry of a no petition at
591 any time within the statute of limitations period for such
592 offense if the person who is the subject of the petition remains
593 under the jurisdiction of the juvenile court the day a new
594 petition is filed. This section does not prohibit the refiling
595 of any original charges or any new charges after the entry of a
596 nolle prosequi when such charges are filed within the statute of
597 limitations period for such offense, if the nolle prosequi was
598 filed before the expiration of the time period provided in
599 subsection (1) and if the person who is the subject of the new
600 charges in the petition remains under the jurisdiction of the
601 juvenile court the day a new petition is filed. The speedy trial
602 period for new or refiled charges shall be the balance of days
603 remaining on the speedy trial period of the charge or charges
604 that were the subject of the nolle prosequi or 60 days,
605 whichever is greater. If the state fails to bring the juvenile
606 to trial on such refiled charges as required under this
607 subsection through no fault of the juvenile, the juvenile's
608 counsel, or anyone acting on behalf of the juvenile or his or
609 her counsel, the court shall dismiss the petition with
610 prejudice.

611 Section 4. Rule 3.191, Florida Rules of Criminal
612 Procedure, is repealed.

613 Section 5. Rule 8.090, Florida Rules of Juvenile Procedure
614 is repealed.

615 Section 6. This act shall take effect upon becoming law,
616 but sections 4 and 5 of this act shall take effect only if this

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617 | act is enacted by a two-thirds vote of the membership of each
618 | house of the Legislature.