

1 A bill to be entitled
2 An act relating to criminal trials; providing a short
3 title; amending s. 918.015, F.S.; providing legislative
4 findings and intent concerning speedy trial requirements;
5 specifying periods for commencement of a trial absent a
6 request for application of the speedy trial time periods;
7 specifying periods for commencement of a trial when a
8 request for application of speedy trial periods is made;
9 providing grounds for denial of such a motion; providing
10 for vacation of such a motion upon good cause; providing
11 for extensions of time; providing for waiver of speedy
12 trial periods; providing requirements for a speedy trial
13 motion; providing for dismissal of charges if a defendant
14 is not brought to trial within the time period prescribed
15 by the court; providing requirements for motions for
16 dismissal; providing limitations on refileing of charges
17 following a dismissal without prejudice; providing for
18 determination of whether a defendant is available for
19 trial for purposes of speedy trial provisions; providing
20 for application of provisions to prisoners outside the
21 jurisdiction; providing for applicability when multiple
22 counts are charged; providing for applicability when a
23 defendant is charged with more than one felony; providing
24 for the effect of appeals; providing for retrial after
25 declaration of a mistrial; providing for application to
26 new or refiled charges after entry of certain entries;
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 repealing Rule 8.090, Florida Rules of Juvenile Procedure,
54 relating to speedy trials in juvenile proceedings;
55 providing a contingent effective date.
56

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

58

59 Section 1. This act may be cited as the "Raymond L. Marky
 60 Speedy Trial Reform Act."

61 Section 2. Section 918.015, Florida Statutes, is amended
 62 to read:

63 918.015 Right to speedy trial.—

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

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

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

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

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

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

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

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

113
114 This subsection does not apply whenever a motion requesting
115 application of the speedy trial time periods has been granted
116 under subsection (4) or when the state files a no information
117 indicating its intent not to file formal charges.

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

126 (a) An order granting a motion under this subsection
127 requires the defendant to be brought to trial within the
128 following time periods:

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

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

134 3. One hundred eighty days after the date of an order
135 granting the motion for a felony of the first degree punishable
136 by imprisonment for a term of years not exceeding life, a life
137 felony, or a capital felony.

138 (b) A motion requesting application of the speedy trial
139 time periods shall be considered a pleading that the defendant
140 is available for trial, has diligently investigated the case,

141 and is prepared or will be prepared for trial within 20 days
 142 after filing the motion. If granted, the motion binds the
 143 defendant and the state. No motion requesting application of the
 144 speedy trial time periods shall be filed or served unless the
 145 defendant has a bona fide desire to obtain a trial sooner than
 146 otherwise might be provided.

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

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

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

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

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

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

169 speedy trial time periods was filed and that reasonably could
170 not have been anticipated by the defendant or counsel for the
171 defendant.

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

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

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

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

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

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

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

196 (g) Other exceptional circumstances exist which, as a

197 matter of substantial justice to the defendant or the state or
198 both, require an extension;

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

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

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

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

208 2. Hearings on pretrial motions.

209 3. Appeals by the state.

210 4. Review by the state under extraordinary writ.

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

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

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

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

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

225 (c) The defendant is unavailable for trial.

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

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

233 (7) MOTION FOR SPEEDY TRIAL.—

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

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

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

252 1. The failure to hold the trial is attributable to the

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

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

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

275 (8) MOTION FOR DISMISSAL.—

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

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

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

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

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

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

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

331 3. A trial on refiled charges arising out of the same
332 criminal episode filed after a dismissal without prejudice or
333 after a nolle prosequi entered as described in subparagraph 2.
334 must be commenced within 60 days for a misdemeanor offense and
335 120 days for a felony offense. If the state fails to bring the
336 defendant to trial on such refiled charges as required under

337 this subparagraph through no fault of the defendant, the
338 defendant's counsel, or anyone acting on behalf of the defendant
339 or his or her counsel, the court shall dismiss the charges with
340 prejudice.

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

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

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

365 subsection. If the acts required under this subsection do not
 366 precede the issuance of an order granting a motion requesting
 367 application of the speedy trial time periods, the order granting
 368 the motion is a nullity.

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

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

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

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

408 Section 3. Subsection (1) of section 985.35, Florida
 409 Statutes, is amended to read:

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

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

420 Section 4. Section 985.36, Florida Statutes, is created to

421 read:

422 985.36 Juvenile right to speedy trial.—

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

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

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

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

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

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

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

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

447 (e) A showing that a delay is necessary to accommodate a
448 codefendant, when there is reason not to sever the cases to

449 proceed promptly with trial of the juvenile;

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

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

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

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

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

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

466 2. Hearings on pretrial motions.

467 3. Appeals by the state.

468 4. Review by the state under extraordinary writ.

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

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

474 (a) The juvenile moves for a continuance.

475 (b) The juvenile is unavailable for trial.

476 (c) The juvenile agrees to provide substantial assistance

477 to the state or law enforcement while his or her case is
478 pending.

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

483 (4) MOTION FOR SPEEDY TRIAL.—

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

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

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

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

495 2. The juvenile was unavailable for trial;

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

498 4. The juvenile is not prepared to proceed to trial within
499 10 days after the hearing on the motion for speedy trial.

500

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

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

513 (5) MOTION FOR DISMISSAL.—

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

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

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

533 and that the prejudice to the juvenile diminished his or her
534 defense in a material way.

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

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

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

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

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

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 5. Rule 3.191, Florida Rules of Criminal
612 Procedure, is repealed.

613 Section 6. Rule 8.090, Florida Rules of Juvenile Procedure
614 is repealed.

615 Section 7. 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.