

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. In addition, if no information or indictment, or in  
126 the case of a misdemeanor by whatever document constitutes a  
127 formal charging document, has been filed within 175 days from  
128 arrest on a felony offense or within 90 days from arrest on a  
129 misdemeanor offense, the accused may file a motion under this  
130 subsection. For purposes of this subsection, the term "arrest"  
131 means physical arrest of the accused or the issuance of a notice  
132 to appear in lieu of physical arrest.

133 (a) An order granting a motion under this subsection  
134 requires the defendant to be brought to trial within the  
135 following time periods:

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

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

141 3. One hundred eighty days after the date of an order  
142 granting the motion for a felony of the first degree punishable  
143 by imprisonment for a term of years not exceeding life, a life  
144 felony, or a capital felony.

145 (b) A motion requesting application of the speedy trial  
146 time periods shall be considered a pleading that the defendant  
147 is available for trial, has diligently investigated the case,  
148 and is prepared or will be prepared for trial within 20 days  
149 after filing the motion. If granted, the motion binds the  
150 defendant and the state. No motion requesting application of the  
151 speedy trial time periods shall be filed or served unless the  
152 defendant has a bona fide desire to obtain a trial sooner than  
153 otherwise might be provided.

154 (c) A motion requesting application of the speedy trial  
155 time periods shall be granted by the court unless the court  
156 determines:

157 1. No document constituting a formal charge has been filed  
158 with the court;

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

161 3. The factual circumstances, seriousness, or complexity  
162 of the case is such that the applicable time period provided  
163 under this subsection is insufficient to allow the state or  
164 defense adequate time to prepare the case for trial.

165 (d) A motion requesting application of the speedy trial  
166 time periods may be refiled not less than 30 days after a denial  
167 of a previous motion requesting application of the speedy trial  
168 time periods.

169        (e) An order granting a motion requesting application of  
170 the speedy trial time periods may only be vacated with consent  
171 of the state or for good cause shown. Good cause for vacating an  
172 order granted under this subsection and granting subsequent  
173 requests for continuances on behalf of the defendant thereafter  
174 shall not include nonreadiness for trial, except as to matters  
175 that may arise after the motion requesting application of the  
176 speedy trial time periods was filed and that reasonably could  
177 not have been anticipated by the defendant or counsel for the  
178 defendant.

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

182        (a) Unexpected illness, unexpected incapacity, or  
183 unforeseeable and unavoidable absence of a person whose presence  
184 or testimony is uniquely necessary for a full and adequate  
185 trial;

186        (b) A showing by the state that the case is so unusual and  
187 so complex, because of the number of defendants or the nature of  
188 the prosecution or otherwise, that it is unreasonable to expect  
189 adequate investigation or preparation within the prescribed time  
190 periods;

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

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

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

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

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

206 (h) The state and defense have signed a stipulation for an  
 207 extension;

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

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

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

215 2. Hearings on pretrial motions.

216 3. Appeals by the state.

217 4. Review by the state under extraordinary writ.

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

221 6. Trial of other pending criminal charges against the  
 222 defendant.

223 (6) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of  
 224 this section shall be deemed waived by the defendant when any of



225 the following occurs:

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

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

232 (c) The defendant is unavailable for trial.

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

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

240 (7) MOTION FOR SPEEDY TRIAL.—

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

244 (b) For purposes of calculating the time periods of this  
 245 section, the filing date of the initial formal charging document  
 246 shall be the only event which commences the running of speedy  
 247 trial periods except as provided in subsections (4) and (10). If  
 248 an information or indictment is filed in lieu of charges  
 249 initially brought by citation, notice to appear, or any other  
 250 document that serves as a charging document, the time period  
 251 shall commence from the date of filing of the citation, notice  
 252 to appear, or other document serving as a charging document, but

253 the applicable time period shall be the period that adheres to  
254 the charge as filed by information or indictment. No later than  
255 5 days after the date of filing the motion for speedy trial, the  
256 court shall hold a hearing on the motion.

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

259 1. The failure to hold the trial is attributable to the  
260 defendant, a codefendant in the same trial, or the counsel of  
261 either;

262 2. The defendant was unavailable for trial;

263 3. The applicable time period or extension granted by the  
264 court has not expired; or

265 4. The defendant is not prepared to proceed to trial  
266 within 10 days after the hearing on the motion for speedy trial.

267  
268 If the court finds that none of the reasons set forth in this  
269 paragraph exist, it shall grant the motion and order the  
270 defendant brought to trial within 10 days unless the court in  
271 its discretion authorizes a longer time period of up to 30 days.

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

281 begin before the judge.

282 (8) MOTION FOR DISMISSAL.—

283 (a) A defendant whose motion for speedy trial has been  
284 granted and who has not been brought to trial pursuant to  
285 subsection (7) may file a motion for dismissal of all charges  
286 and of any uncharged crime arising out the same criminal  
287 episode. A dismissal granted solely due to the failure to bring  
288 the defendant to trial before the expiration of the applicable  
289 time periods shall be without prejudice. A motion for dismissal  
290 with prejudice may be ordered if the defendant filed a motion  
291 requesting application of the speedy trial time periods under  
292 subsection (4) and such motion was granted, and:

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

309 destroyed, substantially degraded, lost, or become unavailable  
310 through no fault of the defendant, the defendant's counsel, or  
311 anyone acting on behalf of the defendant or his or her counsel;  
312 or

313 2. The delay has otherwise constituted a substantive  
314 violation of the defendant's constitutional right to a speedy  
315 trial.

316

317 An order granting a dismissal with prejudice under this  
318 paragraph must specify factual findings in support of its  
319 conclusion.

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

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

337 charged offense.

338 3. A trial on refiled charges arising out of the same  
339 criminal episode filed after a dismissal without prejudice or  
340 after a nolle prosequi entered as described in subparagraph 2.  
341 must be commenced within 60 days for a misdemeanor offense and  
342 120 days for a felony offense. If the state fails to bring the  
343 defendant to trial on such refiled charges as required under  
344 this subparagraph through no fault of the defendant, the  
345 defendant's counsel, or anyone acting on behalf of the defendant  
346 or his or her counsel, the court shall dismiss the charges with  
347 prejudice.

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

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

358 (10) PRISONERS OUTSIDE JURISDICTION.—A person who is in  
359 federal custody or incarcerated in a jail or correctional  
360 institution outside the jurisdiction of this state or a  
361 subdivision thereof is not entitled to the benefit of this  
362 section until that person is returned to the jurisdiction of the  
363 court in this state within which a charge is pending or within  
364 which a charge is to be filed upon such person's return and

365 until written notice of the person's return is filed with the  
 366 court and served on the prosecutor. For such a person, the time  
 367 period under subsection (3) commences on the date the last act  
 368 required under this subsection occurs and the time period under  
 369 subsection (4) commences on the date an order granting a motion  
 370 requesting application of the speedy trial time periods is  
 371 entered following the completion of all acts required under this  
 372 subsection. If the acts required under this subsection do not  
 373 precede the issuance of an order granting a motion requesting  
 374 application of the speedy trial time periods, the order granting  
 375 the motion is a nullity.

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

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

393           (13) PERIOD FOR NEW OR REFILED CHARGES AFTER NO  
 394 INFORMATION OR NO TRUE BILL OR AFTER A TIMELY NOLLE PROSEQUI.-  
 395 This section does not prohibit the state from filing any  
 396 criminal charge after the entry of a no information or no true  
 397 bill at any time within the statute of limitations period for  
 398 such offense. This section does not prohibit the refiling of any  
 399 original charges or any new charges after the entry of a nolle  
 400 prosequi when such charges are filed within the statute of  
 401 limitations period for such offense, if the nolle prosequi was  
 402 filed before the expiration of the applicable time period under  
 403 subsection (3) or subsection (4) or, in the case of an extension  
 404 granted by the court, before the expiration of the court's  
 405 extended time period. The speedy trial period for new or refiled  
 406 charges shall be the balance of days remaining on the speedy  
 407 trial period of the charge or charges that were the subject of  
 408 the nolle prosequi or 60 days for a misdemeanor offense or 120  
 409 days for a felony offense, whichever is greater. If the state  
 410 fails to bring the defendant to trial on such refiled charges  
 411 within the time periods provided under this subsection through  
 412 no fault of the defendant, the defendant's counsel, or anyone  
 413 acting on behalf of the defendant or his or her counsel, the  
 414 court shall dismiss the charges with prejudice.

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

417           985.35 Adjudicatory hearings; withheld adjudications;  
 418 orders of adjudication.-

419           (1) The adjudicatory hearing must be held as soon as  
 420 practicable after the petition alleging that a child has

421 committed a delinquent act or violation of law is filed and in  
 422 accordance with s. 985.36 ~~the Florida Rules of Juvenile~~  
 423 ~~Procedure~~; but reasonable delay for the purpose of  
 424 investigation, discovery, or procuring counsel or witnesses  
 425 shall be granted. If the child is being detained, the time  
 426 limitations in s. 985.26(2) and (3) apply.

427 Section 4. Section 985.36, Florida Statutes, is created to  
 428 read:

429 985.36 Juvenile right to speedy trial.—

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

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

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

- 439 (a) Unexpected illness, unexpected incapacity, or  
 440 unforeseeable and unavoidable absence of a person whose presence  
 441 or testimony is uniquely necessary for a full and adequate  
 442 trial;

- 443 (b) A showing by the state that the case is so unusual and  
 444 so complex, because of the number of persons charged or the  
 445 nature of the prosecution or otherwise, that it is unreasonable  
 446 to expect adequate investigation or preparation within the  
 447 prescribed time period;

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



449 testimony is not available despite diligent efforts to secure  
450 it, but will become available within a reasonable time;

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

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

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

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

463 (h) The state and defense have signed a stipulation for an  
464 extension;

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

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

470 1. An examination and hearing to determine the mental  
471 competency or physical ability of the juvenile to stand for the  
472 adjudicatory hearing.

473 2. Hearings on pretrial motions.

474 3. Appeals by the state.

475 4. Review by the state under extraordinary writ.

476 5. Adjudicatory hearings of other pending charges against

477 the juvenile.

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

481 (a) The juvenile moves for a continuance.

482 (b) The juvenile is unavailable for trial.

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

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

490 (4) MOTION FOR SPEEDY TRIAL.—

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

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

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

499 1. The failure to hold the adjudicatory hearing is  
 500 attributable to the juvenile, a codefendant in the same case, or  
 501 the counsel of either;

502 2. The juvenile was unavailable for trial;

503 3. The time period or extension granted by the court has  
 504 not expired; or

505 4. The juvenile is not prepared to proceed to trial within  
506 10 days after the hearing on the motion for speedy trial.

507  
508 If the court finds that none of the reasons set forth in this  
509 paragraph exist, it shall grant the motion and order the  
510 juvenile to be brought to an adjudicatory hearing within 10  
511 days.

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

520 (5) MOTION FOR DISMISSAL.—

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

532 1. The length of the delay.

533       2. The circumstances and reason for the delay.

534       3. The seriousness of the charge.

535       4. The degree of prejudice to the defense.

536  
537       An order dismissing a petition with prejudice under this  
538       paragraph must be in writing and supported by facts which  
539       support a finding that the length of the delay was unreasonable  
540       and that the prejudice to the juvenile diminished his or her  
541       defense in a material way.

542       (b)1. Charges filed by the state after a dismissal without  
543       prejudice arising out the same criminal episode that was the  
544       subject of dismissal may not include any new charge or any  
545       charge of a higher degree that was not previously dismissed.  
546       This subparagraph does not prohibit amendment of the petition as  
547       necessary to correct errors or deficiencies which do not add a  
548       new charge or increase the degree of severity of a charged  
549       offense.

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

559       3. An adjudicatory hearing on refiled charges arising out  
560       the same criminal episode filed after a dismissal without

561 prejudice or after a nolle prosequi entered as described in  
562 subparagraph 2. must be commenced within 60 days. If the state  
563 fails to bring the juvenile to an adjudicatory hearing on such  
564 refiled charges as required under this subparagraph through no  
565 fault of the juvenile or juvenile's counsel, the court shall  
566 dismiss the charges with prejudice.

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

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

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

581 (8) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A  
582 juvenile who is to have another adjudicatory hearing or whose  
583 adjudicatory hearing has been delayed by an appeal by the state  
584 or the defense shall be brought to an adjudicatory hearing  
585 within 60 days after the date of declaration of a mistrial by  
586 the trial court, the date of an order by the trial court  
587 granting a new trial, the date of an order by the trial court  
588 granting a motion in arrest of judgment, or the date of receipt

589 by the trial court of a mandate, order, or notice of whatever  
 590 form from a reviewing court that makes possible a new trial for  
 591 the respondent, whichever is last in time. If a juvenile is not  
 592 brought to an adjudicatory hearing within the prescribed time  
 593 period, the juvenile may file a motion for speedy trial under  
 594 subsection (5).

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

617 prejudice.

618 Section 5. Rule 3.191, Florida Rules of Criminal  
619 Procedure, is repealed.

620 Section 6. Rule 8.090, Florida Rules of Juvenile Procedure  
621 is repealed.

622 Section 7. This act shall take effect upon becoming law,  
623 but sections 5 and 6 of this act shall take effect only if this  
624 act is enacted by a two-thirds vote of the membership of each  
625 house of the Legislature.