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SPEEDY TRIAL

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### §47-1

#### Generally

### §47-1(a)

#### Constitutional Right

[Klopper v. North Carolina](#), 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967) The constitutional right to a speedy trial is applicable to the states and the dismissal of charges is the appropriate remedy for the denial of a speedy trial.

[Doggett v. U.S.](#), 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992) Even where there is no showing of bad faith by the government, a defendant need not necessarily show specific prejudice to prevail on a constitutional speedy trial claim. Where defendant had lived in this country under his own name for at least six years before the government sought to try him on an outstanding indictment, and he did not acquiesce in the delay, the government's negligence gave rise to a presumption of prejudice, even though defendant did not know of the indictment and therefore suffered neither anxiety nor any restrictions on his liberty. Because the prosecution failed to rebut the presumption of prejudice, the trial court erred by denying the motion to dismiss the charge on speedy trial grounds.

[Dillingham v. U.S.](#), 423 U.S. 64, 96 S.Ct. 303, 46 L.Ed.2d 205 (1975) The right to a speedy trial under the Sixth Amendment is activated when the criminal prosecution is commenced - that is, upon arrest or the filing of a complaint, information or indictment. See also, [People v. Smith](#), 42 Ill.App.3d 731, 356 N.E.2d 656 (5th Dist. 1976) (the fact that an inmate is placed in segregation because his conduct violated an institutional rule does not start the running of the term, though that same conduct provides the basis for the criminal charge; unless there is a deliberate evasion, some prosecutorial action is required to begin the running of the term).

[Barker v. Wingo](#), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) Defendant, who was not tried for more than five years after his arrest, was not denied a speedy trial where the State obtained numerous continuances to try an accomplice so his testimony could be used at defendant's trial. Defendant did not object to the continuances for over three years, a key state witness had been ill, there was no serious prejudice and the record strongly suggests that defendant hoped to take advantage of the delay to obtain dismissal of the charges. In determining whether the right to a speedy trial has been violated, a balancing test is applied. The relevant factors to be considered include: length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant.

[Vermont v. Brillion](#), \_\_\_ U.S. \_\_\_, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009) Generally, appointed defense counsel is not a "state actor" for purposes of the constitutional right to a speedy trial. Because defense counsel is the defendant's agent, delay which counsel causes is attributed to the defendant rather than to the State. The court noted that a different rule would apply if the delay resulted from a "systematic breakdown" of the public defender system and not from counsel's actions on behalf of the defendant. Here, however, the fact that six different attorneys were appointed to represent defendant over a three-year-period was attributable to defendant's refusal to cooperate, and the trial court made no finding that any delay was caused by a breakdown of the appointed counsel system in Vermont.

[People v. Crane](#), 195 Ill.2d 42, 743 N.E.2d 555 (2001) Four factors are balanced to determine whether the constitutional right to a speedy trial has been violated: (1) the length of the delay, (2) the reasons for the

delay, (3) any prejudice to defendant, and (4) whether defendant asserted the right. No single factor is necessary or sufficient to find that a speedy trial violation occurred. The State bears the burden to justify any delay in bringing a defendant to trial. However, reasons for delay are weighed differently; delay caused intentionally to gain a tactical advantage “will weigh very heavily against the State,” while more neutral reasons “such as a crowded court docket” weigh less heavily. Reasons such as unavailability of or inability to locate witnesses, or a judge’s illness, generally justify a delay. Because some delay is “inevitable and wholly justifiable,” a speedy-trial inquiry will not be triggered until the delay becomes presumptively prejudicial. Delays approaching one year are generally presumed to be prejudicial and trigger consideration of the four factors listed above. Here a 26-month delay between reversal of the defendant’s convictions and a new trial was presumptively prejudicial. The delay consisted of three segments: (1) a nine-month delay while the State appealed the Appellate Court’s reversal of the convictions, (2) an 11-month delay between denial of the State’s *certiorari* petition and issuance of the Appellate Court’s mandate, and (3) a six-month delay between the issuance of the mandate and defendant’s motion to dismiss on speedy trial grounds. The court found that only the 11-month delay was unreasonable. The nine-month delay caused by the State’s appeal of the Appellate Court’s ruling was justified where the State had an absolute right to appeal and the appeal was not frivolous, pursued in bad faith or unduly long. “[I]f the State reasonably exercises its right to pursue an appeal, it should not have to risk that the delay will be grounds for dismissal of the charges it seeks to enforce.” The 11-month delay between denial of the *certiorari* petition and the Appellate Court’s mandate was due to the clerk’s negligence, and was “neither reasonable nor an acceptable cause for delay.” Because the “State bears the burden of bringing a defendant to trial, this delay cannot be attributed to the defendant.”

However, the mere fact that delay is attributable to the prosecution does not always mean that a speedy trial violation has occurred; the delay “must be viewed in conjunction with the other **Barker** factors before a determination can be made about its importance to the speedy-trial analysis.” The defense did not challenge the six-month delay between issuance of the mandate and the motion to dismiss. Because defendant was incarcerated during the 11-month delay, he was clearly prejudiced. However, the Appellate Court erred by failing to consider the fourth factor - defendant’s failure to assert his speedy trial right. Because defendant did not demand trial for 24 months after his convictions were reversed, and made his first speedy trial demand only two months before the indictment was dismissed, his failure to assert his right “should not be viewed as a completely neutral factor.” The court stressed that not only was defendant aware that the State intended to retry him, but an earlier demand would have led to discovery of the clerk’s failure to issue the mandate and to an earlier trial. Because the 11-month delay was not “extraordinary” in view of the “seriousness” of the crime, was due to negligence rather than an intentional attempt to prejudice the defendant, and defendant had been previously been convicted of the same charges, “dismissal of the charges is too severe a remedy.”

[People v. Campa, 217 Ill.2d 243, 840 N.E.2d 1157 \(2005\)](#) Under the Speedy Trial Act ([725 ILCS 5/103-5](#)), persons in “custody” must be tried within 120 days of the date on which the custody commenced, except for delay occasioned by the defendant. Persons who are on “bail or recognizance” must be tried within 160 days after they demand trial. The court concluded that a defendant who was unable to post bond, and who was placed on the Cook County sheriff’s “Day Reporting Center,” remained in “custody” and therefore came under the 120-day rule. The court found that the legislature intended that the term “custody” have a broad meaning encompassing lesser forms of restraint than confinement in a correctional institution, and that the restrictions of the day reporting program justified treating the program as “custody.” The court acknowledged that the conditions of the Day Reporting Center were not as severe as those inherent in confinement in a correctional institution, but found that defendant suffered significant restraints on his liberty.

[People v. Kaczmarek, 207 Ill.2d 288, 798 N.E.2d 713 \(2003\)](#) Four factors are to be considered in determining whether the defendant’s constitutional right to a speedy trial has been violated: the length of the

delay, the reasons for the delay, defendant's assertion of his right, and any prejudice to the defense. *De novo* review is applied to the trial court's ruling whether the constitutional right to a speedy trial has been violated.

A delay of one year is presumed to be prejudicial, and requires consideration of the other factors. Thus, the 3½-year delay in this case is presumed to have been prejudicial. However, no more than three months of the 3½-year delay could be attributed to causes independent of defendant's actions. The cause was continued 39 times by agreement, three times by order of the court, and three times on defendant's motion. Defendant was represented in the trial court by six different attorneys, all of whom required time to familiarize themselves with the case. In addition, the case was continued four times because defense counsel failed to appear. A continuance requested by a defense attorney on behalf of a defendant is generally attributed to the defendant, as are continuances by agreement of the parties. In addition, defense counsel's failure to appear constitutes a delay attributed to the defense. Finally, there was no showing of prejudice to the defense. The primary factor in evaluating prejudice is whether the defense was impaired by the delay. Defendant did not specify how his ability to prepare his defense was adversely affected by the delay, and claimed only that he was subjected to anxiety while awaiting trial. Such anxiety is present to some extent in every case, and in the absence of some unusual circumstance is insufficient to establish prejudice.

[People v. Belcher, 186 Ill.App.3d 202, 542 N.E.2d 419 \(2d Dist. 1989\)](#) In December 1985, a criminal complaint was filed against defendant. An arrest warrant was issued but defendant was not arrested until April 1988 — 29 months later. In May 1988, defendant moved to dismiss the charges on the ground that his right to a speedy trial was violated. The defendant testified that from June 1986 to March 1988 he had been in custody of the Department of Corrections, serving a sentence under his correct name. Based upon the length of the delay in arresting the defendant and the absence of any reason for such delay, the trial judge dismissed the charges. The Appellate Court upheld the dismissal order. The State contended that the trial judge erred by finding this case involved post-indictment delay, under [Barker v. Wingo, 407 U.S. 514](#) instead of preindictment delay under [People v. Lawson, 67 Ill.2d 449](#). The Court rejected this argument, stating that the **Lawson** standard does not apply to delay that occurs “after the filing of an indictment, or complaint.” The Court also rejected the State's contention that the charges were improperly dismissed because they were brought within the statute of limitations period.

[People v. Singleton, 278 Ill.App.3d 296, 662 N.E.2d 580 \(1st Dist. 1996\)](#) In November, 1989 defendant was indicted for drug offenses allegedly occurring on September 27 1988, December 8 1988, and May 26, 1989. Each of the charges was contained in a separate indictment. In December 1989, defendant was arrested on the indictments charging the 1988 offenses. However, he was not arrested on or informed of the indictment for the 1989 offense. Defendant pleaded guilty to the 1988 offenses and was sentenced to probation. A petition to revoke probation was filed on April 10, 1991. In addition, defendant was arrested four times in 1992. In January 1994 (four years and eight months after the 1989 offense and four years and two months after the indictment had been filed), defendant was arrested on the 1989 offense. The State conceded that defendant did not know of the indictment for the 1989 offense until he was arrested in 1994, and defendant testified that he had no recollection of the date of the alleged offense. The State also admitted that it had failed to notify defendant of the charge involving the 1989 offense at any time while he was in the State's custody or on probation. The Appellate Court held that defendant's constitutional speedy trial rights were violated under [Barker v. Wingo, 407 U.S. 514 \(1972\)](#). Because the delay here exceeded four years, it was presumed to be prejudicial. In addition, the State was responsible for the delay because it knew defendant's whereabouts on numerous occasions but failed to advise him of the indictment.

**People v. Gay**, 387 Ill.App.3d 424, [903 N.E.2d 741 \(4th Dist. 2008\)](#) Generally, the [Barker v. Wingo, 407 U.S. 514 \(1972\)](#) factors (length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant) are applied to determine whether a defendant's constitutional right to a speedy trial has been violated. The court declined to apply **Wingo**, however, under these unusual circumstances - defendant had

13 unrelated pending cases with extensive and complicated procedural histories, and the trial court attempted to schedule the cases to avoid contaminating the jury pools and to eliminate possible overlap in the juries hearing different cases. The court concluded that defendant's cases were efficiently and diligently handled despite the administrative and logistical constraints created by the multiple proceedings, and that no violation of the constitutional speedy trial right occurred. The court also stressed that the delay in adjudicating defendant's cases was not intended to hamper the defense, did not cause prejudice, was caused by defendant's own conduct, and was reasonable under the circumstances.

[People v. Bredemeier, 346 Ill.App.3d 557, 805 N.E.2d 261 \(5th Dist. 2004\)](#) Although speedy trial rights do not attach to a petition to revoke probation, probation revocation proceedings must comply with minimum requirements of due process, including a prompt hearing. The Appellate Court found that due process was violated by a six-year delay in probation revocation proceedings.

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**Cumulative Digest Case Summaries §47-1(a)**

[Betterman v. Montana, U. S. , 136 S. Ct. 1609, L.E.2d \(No. 14-1457, 5/19/16\)](#)

The Sixth Amendment provides that in criminal prosecutions, the accused has the right to a speedy and public trial. The court concluded that the Sixth Amendment right to a speedy trial applies only after the defendant has been charged and before a conviction is entered. When the State is investigating to determine whether to file a criminal charge, the primary protection against delay is the statute of limitations. After conviction and before sentencing, the due process clause protects against undue delay.

In the course of its opinion, the court noted that the presumption of innocence no longer applies once a person has been convicted. In addition, the sole remedy for a speedy trial violation is dismissal of the charges, a sanction which makes no sense in the context of a defendant who has been convicted but not yet sentenced.

The court also noted that some pre-sentencing delay is necessary for preparation of the pre-sentence report, and that unreasonable delay between conviction and sentencing is prohibited by the rules of various jurisdictions as well as by the due process clause.

[People v. Dalton, 2017 IL App \(3d\) 150213 \(No. 3-15-0213, 6/9/17\)](#)

1. Generally, a person held in custody on criminal charges must be tried within 120 days. The 120-day limitation applies both to charges that have been filed and to charges that have not been filed but would be subject to mandatory joinder with the original charges. Offenses are subject to mandatory joinder when they are based on the same act.

Thus, a defendant held in custody and charged with a single offense must be tried within 120 days not only on that offense but also for any other offenses that could be charged based on the same underlying act. The remedy for a speedy trial violation is dismissal of the charges.

Although the speedy trial period can be extended by delay attributable to the defense, a defendant can only agree to continue the trial with respect to the offenses with which he is actually charged. By agreeing to a continuance, the defendant extends the speedy trial period with respect to the charged offense, but not concerning any uncharged offenses based on the same act.

Consequently, when a defendant is charged with an offense based on conduct that could support charges of multiple offenses, the State must file any additional charges within 120 days. Additional charges filed beyond 120 days violate the speedy trial statute.

2. Where defendant was charged with two counts of aggravated criminal sexual abuse, and more than 120 days later was charged with a separate offense of criminal sexual assault based upon the same act but adding an allegation that defendant and the complainant had lived together continuously for at least one year, defendant's speedy trial rights were violated concerning the additional charge. Because the two charges were

based on the same act, they were subject to mandatory joinder.

(Defendant was represented by Assistant Defender Fletcher Hamill, Elgin.)

**People v. Echols**, 2018 IL App (1st) 153156 (7/18/18)

A 477-day delay between the crime and trial did not violate defendant's constitutional right to a speedy trial. The 182 days between the State's nol-pros of the initial misdemeanor charges and the filing of new felony charges did not count because no charges were pending during this time. The court analyzed the remaining 295-day delay using the factors in **Barker v. Wingo**, 407 U.S. 514 (1972).

The length of the delay fell short of the one-year threshold for a presumptively prejudicial delay. The reason for this delay weighed slightly against the State; the State was negligent in finding defendant because it failed to realize he was in custody for another offense, instead believing that he was failing to appear for his arraignment. Defendant's failure to assert his speedy trial rights during the delay was neutral in this case, because he was not aware of the pending charges. Finally, defendant could not show prejudice because he was incarcerated on other charges, and unaware of the pending charges, throughout the delay. Although he lost the ability to secure concurrent sentences, his defense was not impaired by the delay.

(Defendant was represented by Assistant Defender John Breffeilh, Chicago)

**People v. Kilcauski**, 2016 IL App (5th) 140526 (No. 5-14-0526, 8/31/16)

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs "a little less heavily." Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the "unique" circumstances of this case, defendant's constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff's department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant's return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been released from the custody of the Clinton County sheriff's department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. "Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant's constitutional right to a speedy trial was violated. Defendant's restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent

indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

### [People v. Totzke, 2012 IL App \(2d\) 110823 \(No. 2-11-0823, 8/3/12\)](#)

1. The right to a speedy trial guaranteed by the Sixth Amendment applies only within the confines of a formal criminal prosecution, *i.e.*, once a defendant has been arrested or charged. Absent bad faith, whether the Sixth Amendment right to a speedy trial applies in the period after the cessation of criminal proceedings and before reinstatement of the criminal charges depends on whether the cessation actually terminates, or only suspends, the proceedings.

In Illinois, a *nolle prosequi* is akin to the dismissal of charges, reverting the matter to the same condition that existed before the commencement of the prosecution. The charges are terminated. To reinstate, the State must file a new charging instrument, and the statute of limitations imposes a limit on the length of time in which new charges may be filed. The statutory speedy-trial period stops running unless there is evidence that the State sought to evade the statute through the use of the *nolle prosequi*. Therefore, the Sixth Amendment right to a speedy trial does not apply to any period of delay after a *nolle prosequi* and prior to reindictment.

2. The constitutional guarantee of due process applies more broadly than the Sixth Amendment right to a speedy trial. Due process is the proper test for considering whether the period of delay between a *nolle prosequi* and the filing of new charges is constitutionally acceptable. To constitute a due process violation, it must be shown that the delay between the crime and the arrest or charge caused substantial prejudice to the defendant's right to a fair trial, and that the delay was an intentional device to gain tactical advantage over the accused.

The Appellate Court remanded the cause for the trial court to make factual findings regarding these

two prongs of the due-process test because in some respects the findings of fact that the trial court had made in ruling on the defense motion to dismiss were inconsistent. To avoid fact finding by the Appellate Court, the weighing of relevant factors should be done by the trial court.

3. Four factors are considered in determining whether a defendant's constitutional right to a speedy trial is violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his or her right to a speedy trial; and (4) the prejudice to the defendant as a result of the delay.

The threshold question is whether the delay is presumptively prejudicial. If the delay is presumptively prejudicial, the court should balance the remaining three factors. One year is the generally-recognized dividing point between ordinary and presumptively-prejudicial delay.

In this case, 877 days elapsed between the date of the commencement of the first prosecution and the date on which defendant moved to dismiss on speedy-trial grounds, excluding the period between the *nolle prosequi* and the subsequent reindictment. Therefore the period of delay was presumptively prejudicial as it was substantially in excess of a year. But because the trial court had made conflicting findings and also considered the gap period between the *nolle prosequi* and the reindictment, the Appellate Court remanded for the court to conduct the initial balancing of the factors.

The Appellate Court also "note[d] some principles that may be relevant" on remand. Negligence by the State in bringing a case to trial must be given some weight, but is to be counted against the State more lightly than bad-faith delay. The State cannot be faulted for delays caused by the defendant. The third factor could not weigh against defendant because she asserted her right to a speedy trial in a timely fashion. A more particularized showing of prejudice may be required when the delay is short, while a defendant need not show actual prejudice where the delay is protracted because excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or identify.

The Appellate Court vacated the order of dismissal and remanded for further proceedings.

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### **§47-1(b) Statutory Right**

[Alabama v. Bozeman, 533 U.S. 146, 121 S.Ct. 2079, 150 L.Ed.2d 188 \(2001\)](#) Under the plain language of the Interstate Agreement on Detainers, which creates uniform procedures for trying persons imprisoned in other jurisdictions, charges must be dismissed where a prisoner is brought from another jurisdiction for trial but is subsequently returned to the original jurisdiction before the trial is held. The court rejected the argument that a violation of the Interstate Detainer Act may be "*de minimus*," noting that the language of the Act does not authorize an exception to the mandatory dismissal rule. In addition, the "antishuttling" language was intended to require speedy disposition of charges pending in other states and reduce the uncertainty caused by sending a defendant back and forth between jurisdictions.

[People v. Reimolds, 92 Ill.2d 101, 440 N.E.2d 872 \(1982\)](#) The statute which implements the right to a speedy trial, is to be construed liberally. Each case is to be decided on its own facts. The defendant has the burden of establishing a violation of his right to a speedy trial.

[People v. Love, 39 Ill.2d 436, 235 N.E.2d 819 \(1968\)](#) If the State fails to afford a speedy trial, the defendant is entitled to discharge. See also, [People v. Quintana, 36 Ill.2d 369, 223 N.E.2d 161 \(1967\)](#) (after discharge, defendant cannot be reindicted for the same offense); [People v. Richards, 81 Ill.2d 454, 410 N.E.2d 833 \(1980\)](#).

[People v. Williams, 59 Ill.2d 402, 320 N.E.2d 849 \(1974\)](#) The process of selecting the jury commences the trial for purposes of the speedy trial statute. See also, [People v. Johnson, 144 Ill.App.3d 997, 495 N.E.2d](#)

[633 \(3d Dist. 1986\)](#). But see, [People v. Roberson, 289 Ill.App.3d 344, 681 N.E.2d 1069 \(4th Dist. 1997\)](#) (selection of jury within speedy trial term did not commence trial where jury was subsequently dismissed and defendant was convicted by second jury selected after speedy trial term expired).

[People v. Lybarger, 22 Ill.2d 170, 174 N.E.2d 687 \(1961\)](#) The provisions of the speedy trial statute are not jurisdictional, and a plea of guilty waives any claim under the statute.

[Chicago v. Wisniewski, 54 Ill.2d 149, 295 N.E.2d 453 \(1973\)](#) The speedy trial statute does not apply to municipal ordinance prosecutions. However, the municipality may not merely proceed at its convenience, and a 17-month delay between arrest and trial was excessive.

[People v. Pearson, 88 Ill.2d 210, 430 N.E.2d 990 \(1981\)](#) Case law and the express language of the statute require that the motion for discharge be made prior to trial. Defendant waived the speedy trial contention where he failed to file a pretrial motion.

[People v. Jones, 84 Ill.2d 162, 417 N.E.2d 1301 \(1981\)](#) Defendant, who had been released on pretrial bail, did not make a sufficient “demand” for trial where he filed a demand with the clerk, but failed to give notice to the State’s Attorney. “The term demand requires that the defendant’s stated desire to be tried within 160 days be conveyed to those persons who are in a position to fulfill that desire.”

[People v. Garrett, 136 Ill.2d 318, 555 N.E.2d 1136 \(1990\)](#) Defendant was arrested, charged by information, and held in custody for six weeks. During this period, he made a demand for speedy trial. Defendant was then able to post bond. No demand for speedy trial was made while defendant was on bail. Before trial, defendant filed a motion for discharge on the ground that he had not been brought to trial within 160 days of his demand for speedy trial. The trial judge ruled that the speedy trial demand made by the defendant while he was in custody had continuing effect from the date it was made, and that defendant was therefore entitled to discharge. The Supreme Court discussed the statutory speedy trial provisions (120-days for in-custody defendants) and (160 days for defendants on bail)), and held: “We believe that under the statutory scheme, a demand made by an accused in custody is premature, and we do not discern an intent by the legislature that such a demand have any effect.” Because defendant failed to make a speedy trial demand after he was released on bail, the 160-day speedy trial provision did not commence.

[People v. Staten, 159 Ill.2d 419, 639 N.E.2d 550 \(1994\) \(730 ILCS 5/3-8-10\)](#) embodies a special statute for inmates of the Department of Corrections. Under this statute, the speedy trial period begins to run only where the inmate files a speedy trial demand addressed to the State's Attorney of the county in which the charges are pending and stating his current place of confinement, the term on which he is being held, the length of his remaining term, the charges pending against him, and the counties in which those charges are pending. A general speedy trial demand was insufficient to trigger the speedy trial term for an individual already serving a sentence in the Department of Corrections. Although the State knew defendant's location and therefore suffered no prejudice from the omission of the matters required by ¶1003-8-10, the speedy trial period begins to run only where there is full compliance with the applicable statute.

[People v. Woodruff, 88 Ill.2d 10, 430 N.E.2d 1120 \(1981\)](#) A defendant must be “in custody” for the charge on which he is being prosecuted before the 120-day period on that charge begins to run. Time during which defendant was detained on a juvenile adjudication did not count toward the speedy trial period for a separate armed robbery on which defendant was subsequently tried as an adult. The Court also held that the 120-day period should not begin to run against a juvenile tried as an adult until the trial court enters an order authorizing prosecution as an adult.

[People v. Van Schoyck, 232 Ill.2d 330, 904 N.E.2d 29 \(2009\)](#) A speedy trial demand which had been filed on cases initiated by traffic citations for DUI, driving with a blood alcohol content over 0.08, and driving on a revoked license applied to a felony charge for DUI with a revoked license which was substituted when the State's Attorney subsequently dismissed the first charges. The court found that the underlying DUI offense was the same in both charges, and that DUI while holding a revoked license merely creates an enhanced sentencing classification and not a new crime. The court stressed that cases applying compulsory joinder analysis in determining whether a speedy trial demand carries over to a subsequently-filed charge are relevant only where the subsequent charge involves a different crime. Because the 160 day-speedy trial term ran before the State substituted the felony charge, the trial court erred by denying defendant's motion to dismiss.

[People v. Huff, 195 Ill.2d 87, 744 N.E.2d 841 \(2001\)](#) Unlike [730 ILCS 5/3-8-10](#), which requires that a demand for trial by DOC inmates must contain specific information about the inmate's incarceration and untried charges, [725 ILCS 5/103-5\(b\)](#) does not require that a speedy trial demand take any particular form or specifically cite §103-5. Where the caption of defendant's demand explicitly stated that it was a "Demand for Speedy Jury Trial," the body expressly invoked the statutory right to trial within 160 days, and there was nothing to suggest that "the document was calculated to camouflage the defendant's demand or otherwise hide it from the prosecution's notice," the demand was sufficient to invoke speedy trial protection.

[People v. Ladd, 185 Ill.2d 602, 708 N.E.2d 359 \(1999\)](#) Generally, the defense is charged with delay caused by its motions. However, delay is attributed to the defense only where its actions "in fact caused or contributed" to delay. Furthermore, delay cannot not be assigned to the defense where the record is silent. Here, "nothing shows how the defendant's motions" to dismiss delayed the proceedings. A scheduled hearing on the defense motions did not occur, apparently because the prosecutor was on vacation, and the motions were "simple and uncomplicated and did not require extensive preparation by the State." Here, the defense was properly charged with delay caused by its request for time to submit additional authority. Under the circumstances, however, the defense was not shown to have caused any further delay.

[People v. Quigley, 183 Ill.2d 1, 697 N.E.2d 735 \(1998\)](#) Where the compulsory joinder statute ([720 ILCS 5/3-3\(b\)](#)) requires the State to bring multiple charges in a single prosecution, the speedy trial period for the original charge also applies to any charges that are subsequently filed. Thus, where the State should have filed felony and misdemeanor DUI charges in a single action, and the misdemeanor charge brought in the first action was dismissed on speedy trial grounds, a felony charge filed three weeks later was properly dismissed. See also, [People v. Gooden, 189 Ill.2d 209, 725 N.E.2d 1248 \(2000\)](#) (where the offenses are not subject to the compulsory joinder statute, the speedy trial term for the original charge does not apply to the subsequent charges).

[People v. Williams, 204 Ill.2d 191, 788 N.E.2d 1126 \(2003\)](#) On March 13, 1997, defendant was indicted for contributing to the criminal delinquency of a juvenile. After 152 days had passed, defendant's motion to dismiss on speedy trial grounds was denied. The trial court found that when delay attributable to the defense was excluded, only 99 days had run. On August 27, 1997, the State filed an amended information charging the original offense of contributing to the criminal delinquency of a juvenile and adding three additional charges - first degree murder based on the same act as the original charge, an additional count of contributing to the criminal delinquency of a minor, and first degree murder based upon killing a second person. The trial court subsequently denied a motion to dismiss the murder charge that was based upon the same act as the original charge. Defendant was convicted of all four counts. The Supreme Court held that where the original charge and subsequently added charges are subject to compulsory joinder under [725 5/3-3](#), the speedy trial term which applies to the original charge also applies to the subsequently added charges. Thus, "[i]f the initial and subsequent charges . . . are subject to compulsory joinder, delays attributable to the defendant on the initial charges are not attributable to the defendant on the subsequent charges. . . The

harm in a contrary result is obvious: a trial by ambush. The State could lull the defendant into acquiescing to pretrial delays on pending charges, while it prepared for a trial on more serious, not-yet-pending charges. We cannot presume that a defendant would have agreed to a continuance if he had faced both charges. . . . When the State filed the more serious charges, the defendant would face a Hobson's Choice between a trial without adequate preparation and further pretrial detention to prepare for trial. . . . [W]e do not create a loophole for criminal defendants. Instead, we close a loophole which would allow the State to circumvent a statutorily implemented constitutional right. Because the delays attributed to the defendant on the original contributing charge could not be attributed to him on the subsequently-filed murder charge based upon the same act, the speedy trial act was violated on the murder charge.

**[People v. Wooddell](#)**, 219 Ill.2d 166, 847 N.E.2d 117 (2006) A speedy trial demand made under the Interstate Detainer Statute (730 ILCS 5/3-8-10), which provides that a 160-day speedy trial period applies to persons who demand trial while incarcerated on unrelated charges in the Department of Corrections, remains effective even if the defendant is released from DOC custody. Where the defendant filed a speedy trial demand on deceptive practices charges while she was incarcerated in DOC for perjury, she was entitled to discharge when she was not tried within 160 days of the demand, though she was released on MSR about three weeks after making the demand and failed to renew the demand after her release.

**[People v. Woodrum](#)**, 223 Ill.2d 286, 860 N.E.2d 259 (2006) Under 725 ILCS 5/103-5(a), a defendant who is in custody for an alleged offense must be tried within 120 days, unless he or she occasions delay. When the State adds "new and additional charges" to an existing prosecution, the original speedy trial term applies to the new charges if the charges arise from the same facts, the prosecution knew of those facts when the prosecution was commenced, and the charges are subject to compulsory joinder. In addition, delays attributed to the defendant on the original charges are not attributable to the defense on "new and additional" charges. Although the court "has not previously defined" when subsequent charges should be considered "new and additional," the purpose of the rule is to prevent the State from lulling the defendant into acquiescence on less serious charges while it prepares for trial on more serious charges that have not yet been filed. Where the subsequent charges were identical to the original charges except for the addition of the phrase "for other than a lawful purpose," the original and subsequent charges cited the same statutory section, that section referred to the phrase "for other than a lawful purpose," and all of the charges had the same factual basis, the court found that the subsequent charges were a "reindictment" of the original charges and not "new and additional charges." Because delays attributed to the defense on the original indictments were also attributed to the defense on the subsequent indictments, defendant's statutory right to a speedy trial was not violated.

**[People v. Williams](#)**, 137 Ill.App.3d 816, 484 N.E.2d 790 (5th Dist. 1985) The trial court dismissed the charges after finding that defendant had not been brought to trial within 120 days. Delay attributable to the State occurred from the date of defendant's arrest until the court ordered an examination to determine defendant's fitness and sanity, and from the date defendant was found fit until the day of discharge. The Appellate Court upheld the dismissal, finding that the trial judge's determination was fully supported by the record.

**[People v. Sonntag](#)**, 128 Ill.App.3d 548, 470 N.E.2d 631 (2d Dist. 1984) The speedy trial statute is tolled by an order for a fitness hearing or by an order for examination to determine whether there is a *bona fide* doubt as to defendant's fitness. See also, **[People v. Clark](#)**, 148 Ill.App.3d 669, 499 N.E.2d 147 (5th Dist. 1986).

**[People v. Hillsman](#)**, 329 Ill.App.3d 1110, 769 N.E.2d 1100 (4th Dist. 2002) The statutory speedy trial term is not tolled by a dismissal motion by which the prosecution intends to delay or avoid the right to a speedy trial. The State's decision to *nol pros* and refile identical charges on the 112<sup>th</sup> day of custody was an improper

attempt to circumvent the 120-day speedy trial term. “Under these facts, we find no . . . explanation for the State’s ruse other than a blatant attempt to avert the running of the 120-day speedy-trial period.” The trial court did not abuse its discretion by denying a continuance so the State could research speedy trial issues. A defendant who has been in custody for more than 120 days is entitled to discharge on the day of his scheduled trial. In addition, although the State claimed that it was unprepared to respond to the motion, defense counsel had previously stated that he would file the discharge motion, placing the State on notice the issue would be raised.

[People v. Atou, 372 Ill.App.3d 78, 865 N.E.2d 437 \(1st Dist. 2007\)](#) Supreme Court Rule 21(a) authorizes circuit courts to adopt local rules governing criminal and civil cases, but requires that local rules “not abrogate, limit or modify existing law” or “place additional burdens on litigants, as compared to the requirements of corresponding statutes or Supreme Court Rules.” [725 ILCS 5/103-5\(b\)](#) provides that every person on bail or recognizance shall be tried within 160 days from the date he or she demands trial, unless delay is occasioned by the defense. Because §103-5(b) implements the constitutional right to a speedy trial, it should be liberally construed in favor of the defendant. Cook County Circuit Court Rule 14.2, which requires that a written speedy trial demand be served on the State’s Attorney in open court, conflicts with §103-5(b), which provides that a written speedy trial demand is valid if filed with the clerk of the circuit court and a copy served on the State’s Attorney’s office. Because the Cook County rule places an additional burden on a defendant seeking to file a speedy trial demand and burdens the protections provided by §103.5(b), the local rule must yield. Thus, defendant properly served his speedy trial demand on the State by filing a copy with the circuit clerk and hand delivering a copy to the State’s Attorney’s office.

[People v. Boyd, 363 Ill.App.3d 1027, 845 N.E.2d 921 \(2d Dist. 2006\)](#) Defense counsel was ineffective for failing to seek discharge on speedy trial grounds when the State added new, more serious charges four days before expiration of the speedy trial term on the original charges.

[People v. Callahan, 334 Ill.App.3d 636, 778 N.E.2d 737 \(4th Dist. 2002\)](#) Defense counsel was ineffective for failing to move to dismiss, on speedy trial grounds, additional charges filed just before trial. In January of 1998, the State charged the defendant with first degree murder and criminal damage to State supported property. Approximately 17 months later - 12 days before the trial was scheduled to begin - the State added 20 new charges including eight counts of armed violence, eight counts of aggravated battery, and two counts of attempt murder. All of the new charges were based on the same series of events as the original charges. The State elected to go to trial on four of the armed violence charges added just before trial and on the original first degree murder charge. Where charges are required to be brought in a single prosecution under the compulsory-joinder provision of [720 ILCS 5/3-3\(b\)](#), the speedy trial period which applies to the original charges also applies to any subsequently filed charges. Thus, continuances obtained in connection with the original charges cannot be attributed to the defense with respect to the subsequent charges. Lesser included offenses may be charged at a subsequent date, however, because a charge for an offense includes all included offenses.

[People v. Murray, 379 Ill.App.3d 153, 882 N.E.2d 1225 \(2d Dist. 2008\)](#) [725 ILCS 5/103-5\(a\)](#) provides that for speedy trial purposes, delay “shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or oral demand for trial on the record.” Although there is little case law interpreting what constitutes an “oral demand for trial,” the defendant must make “some affirmative statement requesting a speedy trial, and the demand should not be disguised in ambiguous language.” Merely objecting to a continuance and stating that the defense is ready for trial, without specifically asking for trial or referring to the speedy trial statute, does not constitute an oral demand unless the trial court specifically interprets counsel’s statement as a demand for trial. “In the absence of language clearly showing an intent to invoke the speedy-trial statute, and without a specific finding by the trial court,

there is not an affirmative and unambiguous request for a speedy trial on the record.” Defense counsel made a sufficient oral demand for trial where she objected to a continuance, said she was ready for trial, and specifically asked that the delay be attributed to the State. When substitute counsel appeared on another date, however, and objected to the delay without specifically demanding trial or making reference to the speedy trial statute, there was not a sufficient oral demand to comply with §103-5(a).

**[People v. Peco, 345 Ill.App.3d 724, 803 N.E.2d 561 \(2d Dist. 2004\)](#)** The Appellate Court held that an defendant who is in custody and awaiting trial is not required to demand a speedy trial before the 120-day speedy trial period begins. Although **[P.A. 90-705](#)** (eff. 1/1/99) provides that “[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record,” the plain language of **[725 ILCS 5/103-5\(a\)](#)** requires that an incarcerated defendant be tried “within 120 days from the day he was taken into custody.” Furthermore, the legislature expressly provided that a demand for speedy trial is required by a defendant who is not in custody (**[725 ILCS 5/103-5\(b\)](#)**); had the “legislature intended an in-custody defendant to expressly demand trial prior to commencement of the speedy trial period, it would have expressly so provided.” The court concluded, however, that under **[P.A. 90-705](#)** defendant was charged with delay where he failed to either demand trial or object to an order setting trial in two months. The court rejected the argument that defense counsel’s request that the case be set for a bench trial at “the soonest day possible” was a request for a speedy trial; such a request “merely informed the judge that defendant wanted to schedule his trial as soon as possible.”

**[People v. Sandoval, 381 Ill.App.3d 142, 886 N.E.2d 493 \(2d Dist. 2008\)](#)** **[730 ILCS 5/3-8-10](#)** provides that a speedy trial demand filed by a DOC inmate on a pending charge must include a statement of the place of confinement, the length of the remaining sentence, and the “charges pending against him or her to be tried and the county of the charges.” The demand must be addressed to the State’s Attorney with a copy to the clerk and to the warden of the facility. The court concluded that a demand for a speedy trial on “DuPage DUI” charges was sufficient to require a speedy trial on all pending DUI charges in DuPage County, although the case numbers of the charges were not listed. “Magic words” are not required for a speedy trial demand, so long as the statutory requirements are met. In addition, the protections of the speedy trial act are to be liberally construed in favor of defendants. The court rejected the State’s argument that a speedy trial demand must list the case numbers of the pending charges. By listing “DuPage DUI,” the demand “provided the information necessary to enable the State to locate the particular cases in which the demand was asserted.

**[People v. Stanitz, 367 Ill.App.3d 980, 857 N.E.2d 288 \(2d Dist. 2006\)](#)** Where the defendant was in state custody, the 120-day speedy trial term was not tolled by the State’s voluntary surrender of the defendant to federal authorities. The court rejected the State’s argument that surrendering the defendant necessarily tolled the speedy trial period, noting that the speedy trial statute is to be liberally construed to protect the right to a speedy trial. The court also noted that the defendant was not placed on bail, and therefore remained in State custody even when he was physically in federal custody. The trial court’s order granting defendant’s discharge motion was affirmed.

**[People v. Spurlock, 388 Ill.App.3d 365, 903 N.E.2d 874 \(5th Dist. 2009\)](#)** The Appellate Court held that the filing of a Sexually Dangerous Person petition tolls the speedy trial term for the underlying criminal proceeding. The court stressed that the legislature intended that Sexually Dangerous Person proceedings be in lieu of the criminal prosecution, and that a stay of the criminal proceeding is necessary to give effect to that intent.

**[People v. Moore, 99 Ill.App.3d 664, 425 N.E.2d 1134 \(1st Dist. 1981\)](#)** The Court upheld the dismissal of charges for the State’s failure to bring defendant to trial within 160 days. After the preliminary hearing was concluded, defense counsel stated “we are still ready for trial.” The trial judge responded: “The trial demand

will show.” Counsel’s statement and the trial court’s interpretation of it as a demand for trial, coupled with the State’s failure to object, constituted a demand for trial under the speedy trial statute.

[People v. McRoberts](#), 48 Ill.App.3d 292, 362 N.E.2d 1096 (2d Dist. 1977) Dismissal of the charges for violation of the 160-day rule upheld. Defendant demanded trial and did nothing to toll the running of the term, but the State’s Attorney postponed the trial date because he thought a plea bargain was likely. Compare, [People v. Jones](#), 145 Ill.App.3d 804, 495 N.E.2d 1330 (3d Dist. 1986) (no discharge where trial was postponed because defendant indicated he had accepted plea agreement and was going to plead guilty).

[People v. Moats](#), 165 Ill.App.3d 413, 519 N.E.2d 52 (3d Dist. 1988) Discharge motion was timely. Although counsel failed to comply with the eight-day notice requirement of local court rules, he filed the motion within a reasonable time after learning of the grounds for discharge. Furthermore, “[g]iven the uncertainty as to when the 120-day period started running and whether it was tolled at any time, the trial court could not have properly determined when the defendant should reasonably have known of a possible violation of his speedy trial right and have filed his motion.”

[People v. Stanley](#), 266 Ill.App.3d 307, 641 N.E.2d 1224 (3d Dist. 1994) Where additional charges are filed based upon the same facts as the original charges, and the State knew all the facts at the commencement of the prosecution, the speedy trial limits that apply to the original charge also apply to the new charges. Furthermore, continuances obtained by the defendant on the original charges are not attributable to the defense on the new charges, which were not before the court when the continuances were requested. Here, the prosecutor knew of the facts underlying the new charges when he filed the original charge. Therefore, defendant's speedy trial rights on the new charges were violated.

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**Cumulative Digest Case Summaries §47-1(b)**

[People v. Hunter](#), 2013 IL 114100 (No. 114100, 4/4/13)

1. Under [725 ILCS 5/103-5\(b\)](#), a defendant who has been released on bail must be tried within 160 days from the date on which he files a written demand for trial. Unless the speedy trial period is tolled, a defendant who is not tried within the statutory period must be released and the charges must be dismissed.

[720 ILCS 5/3-3\(b\)](#) provides that charges which are known to the prosecution, based on the same act, and within the jurisdiction of a single court must be joined in a single prosecution unless the trial court determines that separate trials are required in the interests of justice. Once a speedy trial demand is filed, offenses which are subject to compulsory joinder are subject to the same speedy trial term, even if some of the charges are brought at a later date.

2. The court concluded that offenses based on the simultaneous constructive possession of cannabis and two firearms were based on a single act. Although the term “act” is ambiguous, for purposes of the compulsory joinder statute “act” has been defined as including situations where several persons are affected by a single act of the defendant (such as where the defendant steals a container which includes the property of several persons) or where one act violates multiple statutes. Because the compulsory joinder statute is intended to prevent the prosecution of multiple offenses in a piecemeal fashion, joinder is required where the defendant engaged in “only one continuous and uninterrupted act” which results in multiple charges.

The court noted that defendant was not in physical custody of the weapons and cannabis, and that the offenses were based on his constructive possession of the items due to his knowledge of their presence and control over the area where they were found. Because all of the items of contraband were the “object of the same act of constructive possession,” joinder was required.

The court rejected the State’s argument that it should adopt an “elements-based” analysis and find

that offenses composed of different elements and evidence constitute separate “acts” and are not subject to compulsory joinder. The court noted that such analysis applies to the “one act, one crime” doctrine, but does not apply to the compulsory joinder statute.

Because five counts relating to the possession of the weapons were filed 175 days after defendant made a speedy trial demand on the original possession of cannabis charges, and the offenses were based on the same act and known to the prosecution when the original charges were filed, the speedy trial period applicable to the original charge also applies to the subsequently brought charges. Because the weapon charges were filed more than 160 days after the speedy trial demand, those charges were properly dismissed.

(Defendant was represented by Assistant Defender Amanda Ingram, Chicago.)

**[People v. Phipps, 238 Ill.2d 54, 933 N.E.2d 1186 \(2010\)](#)**

When the State files a new and additional charge arising from the same facts as the original charge, and the State had knowledge of those facts at the time of the original charge, and the original and added charge are subject to compulsory joinder, the time within which trial is to commence on the added charge is subject to the same statutory speedy-trial term as to original charge. Continuances obtained in connection with the original charge cannot be attributed to defendant on the added charge, because the added charge was not before the court when the continuances were obtained. The purpose of this rule is to prevent trial by ambush. A defendant may acquiesce to delay on a pending charge while the prosecution prepares for trial on a more serious, uncharged offense. When the prosecution files the new charge, the defendant is then faced with the Hobson’s choice of proceeding to trial without adequate preparation, or enduring further pretrial detention to prepare for trial.

Defendant was originally charged with reckless homicide in that while under the influence of alcohol, and acting in a reckless manner, he hit the vehicle of Gille, causing her death. More than 120 days later, the State charged defendant with aggravated DUI in that defendant drove a vehicle while he was under the influence of alcohol and was involved in an accident, proximately causing the death of Gille.

The Supreme Court concluded that whether defendant could have moved to dismiss the aggravated DUI charge on speedy-trial grounds depended on whether defendant had adequate notice of the added charge from the original charge to allow him to prepare a defense. Since both charges alleged the same conduct – that defendant drove under the influence and collided with Gille, causing her death – the original charge provided defendant with notice of the material elements of the subsequent charge. As there was no danger of trial by ambush, the aggravated DUI charge was not a new and additional charge for speedy-trial purposes. Therefore, the delay that defendant caused or agreed to on the original charge was attributable to defendant on the subsequent charge.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

**[People v. Sandoval, 236 Ill.2d 57, 923 N.E.2d 292 \(2010\)](#)**

730 ILCS 5/3-8-10 provides that a defendant who has been committed to a DOC facility and who has pending charges in any county may demand a speedy trial on those charges by filing a demand with the State’s Attorney and the circuit clerk. The demand must indicate the place at which the defendant is confined, the length of the remaining sentence, the pending charges on which a speedy trial is sought, and the county in which the charges are pending.

A defendant who had multiple DUI charges in DuPage County, and who had been committed to the Department of Corrections on an unrelated charge from Cook County, failed to file an effective speedy trial demand where his demand sought a speedy trial on “DuPage County DUI,” without indicating a case number or any other basis on which his three DuPage County DUI charges could be differentiated. The court stated:

It is not unreasonable to require that defendants demanding a speedy trial under the provisions of §3-8-10 specify the charges to which their demands pertain. That is not to say that case numbers are necessarily required in the demand; however, if they are not included, other adequate indicia of

identification must be provided, such as the name of the charge and the date upon which the offense was allegedly committed. It is not enough to say “Du Page County DUI” if a defendant has 10 such charges pending - or even three in two different cases.

The court also noted that the defendant had received documents which contained the case numbers for at least two of the DUIs, and stated that a defendant who seeks to file a speedy trial demand can easily communicate with the circuit clerk to ascertain the case numbers of the pending charges.

Because the defendant’s speedy trial demand was insufficient, the order dismissing the DUI charges was reversed.

**[People v. Adams, 2012 IL App \(5th\) 100088 \(No. 5-10-0088, 5/7/12\)](#)**

The Interstate Agreement on Detainers is a uniform compact adopted by the United States and 48 states including Illinois. It provides that when a detainer based on untried charges pending in one party state is lodged against a person serving a term of imprisonment in another party state, he “shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court . . . written notice of the place of his imprisonment and his request for a final disposition to be made of the [charges]. . . .” [730 ILCS 5/3-8-9](#) Art. III(a). The prison officials who have custody of the prisoner “shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the [charges] on which the detainer is based. [730 ILCS 5/3-8-9](#) Art. III(c).

Defendant was incarcerated in Kentucky when a detainer was lodged against him based on untried charges filed against him in Illinois. Defendant signed a receipt indicating he had been given a copy of the detainer, but he was not informed of his right to make a request for final disposition of the Illinois charges. Almost six months later, an extradition hearing was held and defendant waived extradition. Defendant moved to dismiss the Illinois charges more than eight months after his return to Illinois.

The failure of Kentucky officials to notify defendant of his right to make a request for final disposition did not provide a basis to dismiss the Illinois charges. The Agreement expressly mandates for dismissal in three circumstances: (1) a trial is not conducted on any charge prior to the prisoner being returned to the original place of imprisonment in the sending state; (2) the receiving state fails to accept custody after filing the detainer or (3) the prisoner made a request for final disposition but is not brought to trial within 180 days of the receipt of his request by the receiving state, or an officer of the receiving state requested transfer and the prisoner is not tried within 120 days of transfer. [730 ILCS 5/3-8-9](#) Art. IV(e), Art. V(c). Adopting the reasoning of several federal courts, the Appellate Court declined to expand the circumstances warranting dismissal beyond those explicitly provided by statute.

The Appellate Court also noted that the defendant did not request a final disposition imperfectly or belatedly even after being apprised of his right to request a final disposition by his Kentucky counsel at the extradition hearing. The Kentucky officials’ neglect of their duty did not prejudice defendant’s defense or his ability to receive a fair trial.

(Defendant was represented by Assistant Defender Michelle Zalisko, Mt. Vernon.)

**[People v. Bauman, 2012 IL App \(2d\) 110544 \(No. 2-11-0544, 12/12/12\)](#)**

1. The Illinois speedy-trial statute implements the constitutional right to a speedy trial and must be liberally construed in favor of defendant to avoid infringement of defendant’s constitutional speedy-trial right. When the determination of whether defendant’s speedy-trial right was violated depends on an interpretation of the statute, review is *de novo*.

2. “Every person on bail or recognizance shall be tried . . . within 160 days from the date defendant demands trial unless delay is occasioned by the defendant . . . . The defendant’s failure to appear for any court date set by the court operates to waive the defendant’s demand for trial made under this subsection.” [725 ILCS 5/103-5\(b\)](#).

Defendant did not appear in court on a status date set by the State for a return of a subpoena that it had served on a forensic science laboratory. Over defense counsel's objection, the court ruled that defendant had waived his previously-filed demand for trial due to his failure to appear.

Under the statute, only defendant's failure to appear for a court date set by the court constitutes a waiver of his speedy-trial demand. A status date set by the State on a subpoena is not a court date set by the court. To find that a waiver occurs whenever defendant fails to appear would make the phrase "any court date set by the court" superfluous.

The purpose of a status date for the return of a subpoena is to allow any interested party the opportunity to object to the production of documents requested in the subpoena. The defendant's failure to appear on the status date waived only his right to object to the subpoena, not his speedy-trial demand.

3. "Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by sections (a), (b) or (e) of this Section and on the day of the expiration of the delay the said period shall continue at the point at which it was suspended." [725 ILCS 5/103-5\(f\)](#).

Defendant's failure to appear on the status date for the return of the subpoena did not cause any delay in the proceedings and therefore did not temporarily suspend the speedy-trial period that began with defendant's filing of a demand for trial.

(Defendant was represented by Panel Attorney Matthew Haiduk, Geneva.)

### [People v. Dismuke, 2013 IL App \(2d\) 120925 \(No. 2-12-0925, 6/19/13\)](#)

If multiple charges are subject to compulsory joinder, the speedy-trial period begins to run when the speedy-trial demand is filed, even if the State brings some of the charges at a later date. The compulsory-joinder statute requires the State to prosecute all known offenses within the jurisdiction of a single court in a single criminal case if they are based on the "same act." "Same act" includes the simultaneous possession of drugs and firearms. [People v. Hunter, 2013 IL 114100](#).

The police executed a search warrant for firearms, ammunition, and proof of defendant's residency, and arrested defendant and ten others on the premises after recovering a firearm, ammunition, and cannabis. The State originally charged defendant with possession of cannabis. It added firearm-related offenses after 160 days had elapsed following defendant's demand on the cannabis charge. The circuit court granted defendant's motion for speedy-trial discharge on the firearms charges because the term had expired when the State filed those charges.

The Appellate Court affirmed. Under **Hunter**, the speedy-trial term on the firearms charges was the same as the speedy-trial term on the cannabis charge and that period had expired when the firearms charges were filed. The court rejected the argument that **Hunter** did not apply if defendant constructively possessed the firearms but actually possessed the cannabis. Actual and constructive possession are not distinct offenses; they are different theories under which defendant may be guilty of possession. Both were committed at the same time and constitute a single act.

The court also rejected the State's argument that the firearms offenses were not subject to compulsory joinder because the firearms offenses were not "known" until the crime lab identified a latent print on the firearm as defendant's. The firearms were the subject of the search warrant and their recovery at the same time that the cannabis was seized provided sufficient knowledge to trigger compulsory joinder.

Although the State contended that it had to wait for the fingerprint evidence to charge defendant because ten other persons were present when the warrant was executed, the court concluded that the solution to this dilemma was for the State to ask for an extension of the speedy-trial term rather than to ignore the statute. The court also noted that the State would have been unable to demonstrate the due diligence necessary for an extension. Within six days of the execution of the warrant, the State had the gun, the latent print from the gun, and defendant's fingerprints, yet did not submit the evidence to the crime lab for analysis until nine months later.

(Defendant was represented by Assistant Defender Kim DeWitt, Elgin.)

[People v. Galloway, 2014 IL App \(1st\) 123004 \(No. 1-12-3004, 9/30/14\)](#)

Under the speedy trial statute, a defendant on bail or recognizance shall be tried within 160 days of the date he or she demands trial. But the defendant's failure to appear "for any court date set by the court" waives the defendant's speedy trial demand. [725 ILCS 5/103-5\(b\)](#). When a defendant fails to appear, the previous demand for trial is waived and a new speedy trial period begins when defendant files a new demand.

Here the trial court set a court date for 9 a.m. on September 20, 2011. When the case was first called on that date, defendant did not appear. The court passed the case but defendant was still not present when it was called again at 10:50 am. The court passed the court a second time, but defendant was still not present when it was called a third time. At that point, the court issued a bond forfeiture warrant. When the case was called a fourth time in the afternoon, defendant was present.

Defendant argued on appeal that she did not waive her initial speedy trial demand by failing to appear on the set court date because, while she failed to appear on the first three calls in the morning of that date, she did appear in the afternoon. Defendant characterized her failure to appear in the morning as "mere lateness" rather than a failure to appear as contemplated by the speedy trial statute. Defendant argued that the term "court date set by the court" should be interpreted broadly to include any appearance during business hours of the scheduled date.

The Appellate Court disagreed with defendant's broad interpretation of what constitutes the set court date. Such an interpretation would defeat the purpose of setting a precise date and time, which the trial court did here, and would permit a defendant to evade trial and avoid waiving a speedy trial demand. The terms of the statute "any court date set by the court" encompass both the date and the time set by the court. Since defendant did not appear at the time set by the court, her previous speedy trial demand was waived and there was no speedy trial violation.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

[People v. Higgenbotham, 2012 IL App \(1st\) 110434 \(No. 1-11-0434, 6/28/12\)](#)

1. The speedy-trial statute provides that every person on bail or recognizance shall be tried within 160 days of the date that the defendant demands trial unless the delay is occasioned by defendant. [725 ILCS 5/103-5\(b\)](#). Delay occasioned by defendant temporarily suspends the speedy-trial term for the time of the delay. On the expiration of the delay, the term continues at the point at which it was suspended. [725 ILCS 5/103-5\(f\)](#). The defendant's failure to appear for any court date set by the court operates as a waiver of defendant's demand for trial. [725 ILCS 5/103-5\(b\)](#).

2. Delay occasioned by defendant includes a continuance allowed pursuant to [725 ILCS 5/114-4](#) upon a trial court's determination of the defendant's physical incapacity for trial. [725 ILCS 5/103-5\(b\)](#). [725 ILCS 5/114-4](#) provides that a continuance allowed due to the physical incapacity of defendant "shall suspend" the provisions of §103-5, "which period of time limitation shall commence anew" when the court determines that the physical incapacity no longer exists. [725 ILCS 5/5-114-4\(i\)](#). Use of the word "suspend" in §114-4(i) suggests a mere interruption of defendant's speedy-trial demand when defendant becomes physically incapacitated. But inclusion of the phrase "commence anew" suggests that the demand ends.

The intent of the legislature is more clearly revealed by referring back to the speedy-trial statute, which also uses the word "suspend" in subsection (f) and makes clear that "suspend" means a delay occasioned by defendant that merely tolls the speedy-trial term. Under the doctrine of *in pari materia*, two statutes must be considered with reference to each other to allow for a harmonious interpretation of the relevant provisions, and words and phrases should be construed with reference to the other relevant provisions and not in isolation. The only logical interpretation of these two statutes is that the term tolls when defendant obtains a continuance due to physical incapacity, and then continues from the date at which it was stopped when the physical incapacity is removed.

3. Defendant's speedy-trial term was merely tolled and did not end when her attorney appeared in court and requested a continuance due to defendant's hospitalization, supported by a note written by defendant's physician. This was not a failure to appear under subsection (b), but an absence and the grant

of a motion for continuance due to physical incapacity under subsection (f) and §114-4(i).

4. On two subsequent dates, defendant failed to appear in court and her attorney informed the court that she had been unable to reach the defendant since her hospitalization. When defendant did appear after the two missed court dates, she supplied a doctor's note explaining that she had been hospitalized. Even though the trial court credited the doctor's note and found that her absence on those court dates was not willful, defendant's failure to appear terminated, and did not toll, the speedy-trial term.

When a defendant fails to appear in court for any reason, the defendant waives a demand for a speedy trial, regardless of whether an explanation for that absence is provided at a subsequent court date. A defendant cannot transform a failure to appear under subsection (b) into a delay occasioned by defendant under subsection (f), and avoid the effects of waiver, simply by providing an explanation for the absence at a subsequent court date. To avoid the effect of waiver, defendant must communicate with counsel prior to the court date, as defendant did on her first missed court date. The court may then grant a continuance upon receipt of evidence of defendant's incapacity.

The Appellate Court reversed the order granting defendant's motion to dismiss on speedy-trial grounds.

**[People v. Hunter, 2012 IL App \(1st\) 092681 \(No. 1-09-2681, 2/24/12\)](#)**

1. When an original charge and subsequently-added charges are subject to compulsory joinder under [720 ILCS 5/3-3\(b\)](#), the speedy-trial term applicable to the original charge also applies to the subsequently-added charges. Any delays occasioned by the defendant in the running of the speedy-trial term on the original charge are not attributable to the defendant on the subsequently-added charges, because the additional charges were not before the court when the continuances were obtained.

The compulsory-joinder rule applies where: (1) the offenses are known to the proper prosecuting officer at the time that the prosecution is commenced; (2) the offenses are within the jurisdiction of a single court; and (3) the offenses are based on the same act.

2. Defendant was originally charged with possession of cannabis with intent to deliver. As defendant was released on bond, that applicable speedy-trial term was 160 days. [725 ILCS 5/103-4\(b\)](#). After more than 160 days had elapsed, the State added charges of unlawful use of a weapon by a felon and armed habitual criminal.

The court rejected the State's argument that the offenses were not subject to compulsory joinder because they were not based on the same act. The criminal act consisted of defendant constructively and simultaneously possessing the cannabis and the handguns, which cannot be artificially divided into multiple distinct and overt acts. It is immaterial that the cannabis charge and the gun charges have different elements as a single criminal act may violate multiple statutes.

Because the State filed the additional charges after more than 160 days had elapsed from the date of defendant's arrest, and none of the delay occasioned by defendant on the cannabis charge could be attributed to defendant on the weapons charges, the court affirmed the circuit court's order dismissing the weapons charges due to the statutory speedy-trial violation.

(Defendant was represented by Assistant Defender Amanda Ingram, Chicago.)

**[People v. Jones, 2018 IL App \(1st\) 151307 \(3/22/18\)](#)**

In 1999, the speedy trial statute, 725 ILCS 5/103-5, was amended to require a written or oral demand for trial in order to avoid having delay attributed to defendant. While no "magic words" are required, there must be some affirmative statement requesting a speedy trial. Here, defense counsel did not object when the court asked for counsel's position on the State's request for a continuance due to witness unavailability, nor did counsel object to the delay during the ensuing discussion concerning rescheduling. Accordingly, the 36-day delay in question was attributable to defendant and there was no statutory speedy trial violation.

The Appellate Court also found the Illinois Sex Offender Registration Act and the Illinois Sex Offender Community Notification Law (SORNA) were not unconstitutional as applied to defendant under

the Eighth Amendment or the proportionate penalties clause. Following Supreme Court precedent holding that SORNA is not punitive, the Appellate Court rejected the Third District's recent decision in **People v. Tetter**, 2018 IL App (3d) 150243, which held to the contrary. The Court was also critical of **Tetter**'s ultimate outcome because it completely relieved that defendant of any and all restrictions under SORNA rather than continuing to apply the portions of SORNA that previously had been upheld by the Supreme Court.

An Eighth Amendment and proportionate penalties challenge to the predatory-sexual-assault statutory scheme was also rejected. While the 17-year-old defendant's conduct would have been a Class A misdemeanor rather than a Class X felony had it been committed either two months earlier (before he turned 17) or two months later (after the victim turned 13), the legislature must draw the line somewhere and there will always be individuals close to the line. Defendant's reliance on **People v. Miller**, 202 Ill. 2d 328 (2002), and **People v. Gipson**, 2015 IL App (1st) 122451, was rejected because those defendants were each only 15 years old, they had received mandatory sentences of life or near life, and there were mental health issues at play in **Gipson**, as well. Defendant's 10-year sentence was close to the 6-year minimum and was not an abuse of discretion.

(Defendant was represented by Assistant Defender Meredith Baron, Chicago.)

**[People v. Kazenko](#), 2012 IL App (3d) 110529 (No. 3-11-0529, 7/2/12)**

1. Every defendant on bail or recognizance shall be tried within 160 days from the date he demands trial unless delay is occasioned by the defendant. [725 ILCS 5/103-5\(b\)](#).

When multiple charges are filed against the defendant at different times, and the compulsory-joinder rule applies, the multiple charges are subject to the same speedy-trial period, which begins to run when the demand for speedy trial is filed, even if the charge is brought at a later date. Any delay attributable to defendant on the original charge will not toll the speedy-trial period as to the subsequent charge, if the delay occurred before the subsequent charge was filed, because the subsequent charge was not before the court when the delay occurred.

2. The compulsory-joinder rule requires that multiple charges against a defendant must be joined in a single prosecution where: (1) the multiple charges are known to the prosecutor when the prosecution begins; (2) the charges are within the jurisdiction of a single court; and (3) the charges are based on the same act. [720 ILCS 5/3-3\(b\)](#).

The compulsory-joinder rule does not apply to offenses that are charged by a uniform citation and complaint form provided for traffic offenses. [People v. Jackson](#), 118 Ill. 2d 179, 514 N.E.2d 983 (1987). The compulsory-joinder rule applies only if the several offenses are known to the proper prosecuting officer, i.e., the State's Attorney, when the prosecution began. Uniform citation and complaint forms are filled out and filed by police officers, not by a State's Attorney, so the compulsory-joinder rule does not apply to offenses charged in that manner.

3. Defendant was charged by traffic citation with driving under the combined influence of alcohol and drugs. [625 ILCS 5/11-501\(a\)\(5\)](#). More than 160 days after defendant had filed a speedy-trial demand, the State was allowed leave to file an amended information charging driving under the influence of alcohol. [625 ILCS 5/11-501\(a\)\(2\)](#). Because the compulsory-joinder rule did not apply when the original charge was brought by a uniform citation and complaint form, the trial court erred in dismissing the new charge on speedy-trial grounds.

Schmidt, J., specially concurred. The majority's reliance on [Jackson](#) is misplaced because **Jackson** is distinguishable. The new charge in [Jackson](#) was a felony charge that could not be charged by use of a uniform citation form and therefore it was impossible for the officer writing the ticket to charge the traffic offense and the felony. Here, the new charge was another DUI charge of which the charging officer was aware and able to charge at the time the original charge was made. It was not necessary to decide this issue, however.

Whether a charge is "new and additional" with respect to the right to speedy trial depends on

whether the original charge gave defendant sufficient notice of the subsequent charge to prepare adequately for trial on that charge. Where the original charge gives defendant notice of the subsequent charge, any delays attributable to defendant for speedy-trial purposes on the initial charge are also attributable to him on the subsequent charge.

The original charge put defendant on notice that he was charged with driving under the combined influence of alcohol and drugs. The additional charge of driving under the influence of alcohol added no new element as driving under the influence of alcohol was an explicit element of the original charge. Therefore, any delays attributable to defendant on the original charge were also charged to him on the subsequent charge.

**[People v. Kilcauski, 2016 IL App \(5th\) 140526 \(No. 5-14-0526, 8/31/16\)](#)**

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs “a little less heavily.” Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the “unique” circumstances of this case, defendant’s constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff’s department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant’s return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been released from the custody of the Clinton County sheriff’s department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. “Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant’s constitutional right to a speedy trial was violated. Defendant’s restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial

incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

**[People v. Kohler, 2012 IL App \(2d\) 100513 \(No. 2-10-0513, 4/12/12\)](#)**

“Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant . . . . The defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial made under this subsection.” [725 ILCS 5/103-5\(b\)](#).

Defendant appeared at a bond hearing after he was arrested on a warrant issued due to his failure to appear at a court date. The court ordered defendant released from custody on a personal recognizance bond and defense counsel filed a demand for speedy trial.

1. Defendant's speedy-trial demand on the date of the bond hearing was not premature on the theory that he was in custody at the time that the demand was made. Unlike [People v. Garrett, 136 Ill. 2d 318, 555 N.E.2d 1136 \(1990\)](#), where the court concluded that a speedy-trial demand made about two months before defendant's release from custody did not serve to commence the 160-day statutory term for a defendant released on bail or recognizance, defendant's demand was made on the same day as his release. Once the court ordered that the defendant be released on recognizance, he was restored to liberty, the only remaining restriction on his liberty being that he attend court hearings.

2. The defendant properly served the speedy-trial demand on the assistant State's Attorney who appeared at the bond hearing, even though the arresting officer designated the Village of Long Grove as the charging entity on the citation and the Village attorney ultimately prosecuted the case. The Appellate Court dismissed the prosecution's argument to the contrary as “little more than gamesmanship and disingenuity.” “[W]e do not believe that a police officer in the field chooses who will prosecute a matter with the tick of his or her pen.”

The Illinois Vehicle Code allows a State's Attorney to authorize a municipality's attorney to prosecute a violation of the Code, but does not divest the State's Attorney of his or her right to appear in the case even when the municipal prosecutor has been authorized to try the case. [625 ILCS 5/16-102\(c\)](#). Thus the assistant State's Attorney on whom the demand was served in the absence of the municipal prosecutor was representing the Village's interests. Defendant could reasonably expect that the assistant was going to act as prosecutor or would make sure that the actual prosecutor would be kept up to speed on significant

developments such as the speedy-trial demand.

3. Defendant's absence from a subsequent court date due to his illness was not a failure to appear that waived his speedy-trial demand under the statute. Although defendant was not personally present, his counsel appeared for him and explained defendant's inability to attend the hearing due to illness. The prosecutor had been informed that defendant was ill and the court granted the motion for continuance without any objection from the prosecution. The defendant's absence did not result in the issuance of a bond-forfeiture warrant. This was not a failure to appear, but an absence and the grant of a motion to continue, which was a delay attributable to the defendant, but not a waiver of his demand. The Appellate Court also noted the inconsistency in the prosecution's argument that the absence due to illness amounted to a waiver of the speedy-trial demand, while ignoring defendant's absence on another court date at which the court had waived his appearance, although the trial court had treated both absences in the same manner.

4. Defendant's failure to object to the court setting the trial date outside of the term was of no consequence. Unlike subsection (a) of the statute, which governs when a defendant is in custody and imposes a duty on defendant to object when the trial court sets a trial date outside of the statutory period, subsection (b) imposes no equivalent duty on a defendant who is not in custody.

Because the trial court erred in denying defendant's motion to dismiss on statutory speedy-trial grounds, the Appellate Court vacated defendant's convictions.

(Defendant was represented by Assistant Defender Bruce Kirkham, Elgin.)

**[People v. Mays, 2012 IL App \(4th\) 090840 \(No. 4-09-0840, 8/30/12\)](#)**

When new and additional charges arise from the same facts as did the original charges and the State had knowledge of these facts at the commencement of the prosecution, the time within which trial is to begin on the new and additional charges is subject to the same statutory speedy-trial limitation that is applied to the original charges. Continuances obtained in connection with the trial of the original charges cannot be attributed to the defendant with respect to the new and additional charges because they were not before the court when those continuances were obtained. This rule applies only when the original and newly-file charges are subject to compulsory joinder.

The purpose of this rule is to avoid a trial by ambush. The question for speedy-trial analysis is whether defendant had adequate notice of the subsequent charges to allow him to prepare and present a defense. If the original charging instrument gives defendant adequate notice of the subsequent charges, the ability to prepare for trial on those charges is not hindered in any way.

The State originally charged defendant with knowing and intentional first-degree murder and that he had personally discharged the firearm. On the day of trial, 233 days after the date of defendant's arrest, the State added charges of felony murder based on home invasion, and that defendant was accountable for the conduct of the person who discharged the firearm. The jury convicted defendant of the new charges.

The Appellate Court concluded that no speedy-trial violation resulted from the filing of these additional charges. First, the notion that defendant was guilty of felony murder and home invasion arose from a letter the State received from defense counsel communicating that theory of the shooting. Therefore, the defense could not claim surprise when the State added those charges. Second, Illinois law recognizes only a single offense of murder, which may be committed in a variety of ways, and the precise statutory theory need not be specifically alleged. Therefore, under the facts of this case, the added charges could not be considered new and additional under a speedy-trial analysis.

(Defendant was represented by Assistant Defender Amber Gray, Springfield.)

**[People v. McGee, 2015 IL App \(1st\) 130071 \(Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16\)](#)**

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160 days, depending on his custodial status, unless delay is caused by the defendant. 725 ILCS 5/103-5.](#) When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is "tempered by

compulsory joinder principles.”

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim’s burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State’s arguments that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant’s death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner’s trial testimony could not possibly have prompted the State’s pretrial decision to charge defendant with murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner’s opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner’s opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State’s argument, holding that the phrase “jurisdiction of a single court” does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant’s conviction for first-degree murder, entered conviction on the lesser-included offense of aggravated battery, and remanded for resentencing.

(Defendant was represented by Assistant Defender Kadi Weck, Chicago.)

**[People v. Minor, 2011 IL App \(1st\) 101097 \(No. 1-10-1097, 12/9/11\)](#)**

The speedy-trial statute provides that every person on bail or recognizance shall be tried within 160 days of the date that the defendant demands trial unless the delay is occasioned by defendant. [725 ILCS](#)

[5/103-5\(b\)](#). The statute also provides that delay occasioned by defendant temporarily suspends the speedy-trial term for the time of the delay, and that on the expiration of the delay, the term continues at the point at which it was suspended. [725 ILCS 5/103-5\(f\)](#). After adoption of subsection (f), subsection (b) was amended to provide that the “defendant’s failure to appear for any court date set by the court operates to waive the defendant’s demand for trial.”

Prior to amendment of subsection (b), delay occasioned by defendant’s failure to appear in court merely suspended the speedy-trial term. The plain language of the amendment manifested the legislature’s intent to distinguish a defendant’s failure to appear from other types of delay. A defendant who fails to appear voluntarily relinquishes his right to trial within 160 days of his demand for trial. Treating a failure to appear as comparable to a request for continuance or other delay would entitle a fugitive to the benefit of an earlier speedy-trial demand when apprehended and brought before the court. [People v. Zakarauskas, 398 Ill.App.3d 451, 924 N.E.2d 578 \(1st Dist. 2010\)](#).

Defendant, who had previously demanded trial, failed to appear on her court date, subsequently explaining that she had mixed up the court dates. Her failure to appear operated to waive her speedy trial term, rather than suspend it. An explained failure to appear was not distinguishable from an unexplained failure to appear because no such distinction exists in the language of the statute. A court cannot read into the statute a condition, exception or limitation not expressed by the legislature.

The court reversed the order granting defendant’s motion for speedy-trial discharge.

[People v. Moody, 2015 IL App \(1st\) 130071](#) (Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16)

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160](#) days, depending on his custodial status, unless delay is caused by the defendant. [725 ILCS 5/103-5](#). When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is “tempered by compulsory joinder principles.”

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim’s burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State’s arguments that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant’s death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner’s trial testimony could not possibly have prompted the State’s pretrial decision to charge defendant with murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner’s opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner's opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State's argument, holding that the phrase "jurisdiction of a single court" does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant's conviction for first-degree murder.

(Defendant was represented by Assistant Defender Sarah Curry, Chicago.)

#### [People v. Patterson, 392 Ill.App.3d 461, 912 N.E.2d 244 \(2d Dist. 2009\)](#)

1. Under [725 ILCS 5/103-5\(b\)](#), "the defendant's failure to appear for any court date set by the court operates to waive "a demand for a speedy trial." The Appellate Court concluded that the same rule applies to speedy trial demands made under the intrastate detainer's statute, because "statutes relating to the same subject matter must be construed together so that effect may be given to all the provisions of each statute." The court added, "[W]e presume that all statutes relating to one subject are governed by one policy and that the legislature intended them to be operative and harmonious."

The court also noted that the intrastate detainers act does not create a separate speedy trial right, but merely applies the statutory speedy trial right to persons who are committed to the Department of Corrections on unrelated offenses.

2. Because the language in §103-5(b) is clear and ambiguous, the failure to appear at even one court date waives a speedy trial demand. The court also stated that a "waiver by failure to appear" occurs even if the missed court appearance occurs after the speedy trial term has run – "the running of the speedy trial period means only that a defendant can enforce his or her demand; it does not mean that he or she cannot waive it."

(Defendant was represented by Assistant Defender Bruce Kirkham, Elgin.)

(This summary was written by Deputy State Appellate Defender Daniel Yuhas.)

#### [People v. Payne, 2015 IL App \(2d\) 120856 \(No. 2-12-0856, 3/9/15\)](#)

The Interstate Agreement on Detainers is a uniform compact adopted by 48 states, including Illinois and Wisconsin. The agreement establishes the procedure for bringing a defendant imprisoned in one to trial on charges pending in another, and permits a defendant to request a final disposition of an untried charge. When a defendant makes such a request, he must be tried within 180 days after he has delivered to the prosecutor and the trial court written notice of his place of imprisonment and his request for a final disposition. The defendant must send a written notice of his request for final disposition to the prison officials, who in turn must promptly forward the request to the prosecutor and trial court. [730 ILCS 5/3-8-9](#), art. III.

Defendant was charged with various offenses in Illinois while he was serving a prison sentence in Wisconsin. The Illinois prosecutors received a letter from the Wisconsin prison officials which included a

written request from defendant for a final disposition of the untried charges in Illinois. The letter also stated that it was “carbon copied” to the trial court in Illinois.

Defendant argued that they violated the detainer agreement by failing to bring him to trial within 180 days of the date the prosecutors received his request for a final disposition. The Appellate Court disagreed. It held that the request must actually be delivered to both the prosecutor *and* the trial court before the 180-day period begins. The record, however, only shows that the request was delivered to the prosecutors and mailed to the trial court. There was no showing that the request was actually delivered to the trial court. Consequently, there was no showing that the 180-day period began to run.

Defendant’s convictions were affirmed.

(Defendant was represented by Supervisor Josette Skelnik, Elgin.)

**[People v. Shipp, 2011 IL App \(2d\) 100197 \(No. 2-10-0197, 10/5/11\)](#)**

When new and additional charges arise from the same facts as did the original charges, and the State had knowledge of these facts at the commencement of the prosecution, the time within which trial is to begin on the new and additional charges is subject to the same statutory limitation applied to the original charges. Continuances obtained in connection with the trial of the original charges cannot be attributed to the defendant with respect to the new and additional charges because they were not pending before the court when those continuances were obtained. This rule applies only to new and additional charges based on the same act that are subject to compulsory joinder under [720 ILCS 5/3-3](#).

The State charged defendant with a violation of [720 ILCS 570/407\(b\)\(2\)](#) in that he possessed with intent to deliver in violation of [720 ILCS 570/401\(c\)](#) more than 1 gram but less than 15 grams of a substance containing cocaine. At arraignment, the court brought to the prosecutor’s attention that §407(b)(2) applies to an amount less than one gram, but the prosecutor declined to correct the inconsistency. Almost two years later, over defense objection, the court permitted the State to amend the charge to a violation of §407(b)(1), conforming the code section to the language of the body of the charge.

Both the original and amended charge were based on the same act. There was no new and additional charge, however, because the amendment was not material and only corrected a formal defect. Generally, an error in the citation of the statute giving rise to a charge is a mere technical defect subject to amendment. Amendments are only material where a defendant is surprised by the amendment. The amendment that occurred here was not to the factual allegations, but to the statutory citation. Defendant could not credibly complain surprise because the facts alleged did not change. It was clear all along that the statutory citation was a miswriting.

Therefore, the speedy-trial statute was not implicated by the amendment, and trial counsel was not ineffective in failing to make a motion for speedy-trial discharge.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

**[People v. Smith, 2016 IL App \(3d\) 140235 \(No. 3-14-0235, 6/9/16\)](#)**

1. Under the speedy trial statute, a defendant must be tried within 120 days from the date he was taken into custody unless he has caused delay. [725 ILCS 5/103-5\(a\)](#). A defendant does not need to demand trial to begin the 120-day period. Under the intrastate detainer statute, however, a defendant committed to the Illinois Department of Corrections must demand trial before the statutory speedy trial period of 160 days begins to run. [730 ILCS 5/3-8-10](#).

When a defendant is in custody awaiting trial in one county and charges are pending against him in another county, the 120-day speedy trial period does not begin to run until the proceedings in the first county end and defendant is held in custody by the second county. In order to be held in custody by the second county, the second county must serve a warrant on defendant while he is still incarcerated in the first county.

2. Defendant was indicted for an offense in Peoria County on March 20, 2012. At that time, defendant was incarcerated in Sangamon County awaiting trial for a Sangamon County offense. On June 24, 2012, an arrest warrant for the Peoria County offense was served on defendant. On June 11, 2013, defendant

was sentenced for the Sangamon County offense. On July 12, 2013, defendant was transferred to the Illinois Department of Corrections. On August 8, 2013 defendant was transferred to Peoria County and arraigned. Defendant answered ready for trial and the State sought several continuances. On October 24, 2013, defendant made a motion to dismiss based on a speedy trial violation. The trial court denied the motion.

3. The Appellate Court held that the State failed to bring defendant to trial within 120 days in violation of the speedy trial statute. Defendant was not committed to the DOC at the time he was sentenced in the Sangamon County case. Instead, defendant had been served with a warrant in the Peoria County case while he was awaiting trial in the Sangamon County case. As soon as defendant was sentenced in the Sangamon County case, the proceedings in that case terminated and the custody of defendant was legally transferred to Peoria County. Accordingly, the 120-day speedy trial period applied to defendant rather than the 160-day period that would have applied if defendant had been in the custody of the DOC.

Since the State failed to bring defendant to trial within 120 days, the Appellate Court ordered the charges against him dismissed.

(Defendant was represented by Assistant Defender Lucas Walker, Ottawa.)

**[People v. Wells, 2012 IL App \(1st\) 083660 \(No. 1-08-3660, 3/9/12\)](#)**

1. When new and additional charges arise from the same set of facts as the original charges and the State had knowledge of these facts at the commencement of the prosecution, the time within which trial is to begin on the new and additional charges is subject to the same statutory speedy-trial limitation that is applied to the original charges. Continuances obtained in connection with the trial of the original charges cannot be attributed to defendant on the new and additional charges because they were not before the court when the continuances were obtained. The purpose of this rule is to prevent a trial by ambush. When the State files additional charges, the defendant should not be faced with a Hobson's choice between a trial without adequate preparation and further pretrial detention to prepare for trial.

2. Whether the subsequent charges are new and additional depends on whether the original charging instrument gave the defendant adequate notice of the subsequent charges to prepare for trial on those charges. If the original charging instrument gives defendant adequate notice of the subsequent charges, the ability to prepare for trial on those charges is not hindered in any way, and defendant may proceed to trial on the subsequent charges with adequate preparation instead of being forced to agree to delay. In that circumstance, the rationale for declining to attribute to defendant delays in connection with the original charge does not apply. Whether the subsequent charges are new and additional charges is a legal issue reviewed *de novo* as it involves a comparison of the charges. No facts are in dispute.

3. Defendant was charged with two counts of aggravated stalking. He was subsequently indicted on two counts of aggravated stalking alleging the identical conduct, except for the case number of the order of protection that the defendant allegedly violated. The order of protection had originally been entered under one case number, but was entered under a corrected case number on the same date. The first indictment alleged the original case number and the subsequent indictment alleged the corrected case number.

The Appellate Court concluded that the subsequent indictment did not bring any new and additional charges against the defendant. Defendant had adequate notice of the subsequent charges to enable him to prepare a defense because the charges were identical. The only change was to correct a technical error, an incorrect case number. Defendant could not have been surprised by the subsequent charges because they were essentially the same as the original charges. Therefore, defendant's speedy-trial rights were not implicated.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

**[Village of Mundelein v. Bogachev, \\_\\_\\_ Ill.App.3d \\_\\_\\_, \\_\\_\\_ N.E.2d \\_\\_\\_ \(2d Dist. 2011\) \(No. 2-10-0346, 5/27/11\)](#)**

1. The statutory speedy-trial provision contains two subsections. Subsection (a) applies when the defendant is in custody. Subsection (b) applies when the defendant is released on bail or recognizance. [725](#)

[ILCS 5/103-5](#). Subsection (a) requires that the defendant be tried within 120 days of the date that he was taken into custody (with certain exclusions), while subsection (b) and requires that he be tried within 160 days of the date that he demands trial (with the same exclusions).

Subsection (a) contains a provision, not contained in subsection (b), that “[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record.” This provision cannot be read into subsection (b). The legislature was capable of incorporating a duty to object into subsection (b) and chose not to do so. There is no general principle of fairness or forfeiture that would require *any* defendant to object to a proposed continuance to avoid having that delay charged to him.

Because defendant was on bond, subsection (b) applied, and defendant was not required to object when the court on its own motion continued his case to a date after the expiration of the statutory speedy-trial term. That period of delay could not be charged to defendant based on his failure to object to the continuance.

2. As a general rule, delay caused by a defense pretrial motion is attributable to the defendant. Even in the context of a defense motion, delay may be attributed to defendant only if his actions did in fact cause or contribute to delay. Defendant is not responsible for delay caused by crowded dockets and prosecutorial caseloads.

The trial court did not abuse its discretion in not charging defendant with the delay of the hearing of his pretrial motion after both parties answered ready on the motion. The trial court ordered continuances of the hearing on the pretrial motion on its own motion. The pretrial motion itself was a boilerplate document raising only the question of whether the arresting officer had reasonable suspicion to stop defendant. The State provided no transcripts of the [hearings at](#) which the continuances were granted that could shed any further light on why the continuances were ordered. Thus the record shows that the continuances were based on matters outside defendant’s control and responsibility, such as the court’s busy schedule.

The court affirmed the order granting defendant’s motion to dismiss due to a speedy-trial violation. (Defendant was represented by Assistant Defender Darren Miller, Elgin.)

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## §47-2

### Delay in Commencing Prosecution

[U.S. v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752 \(1977\)](#) Prosecution of a defendant after good faith pre-indictment or investigative delay does not violate due process, even if the defense is somewhat prejudiced by the lapse of time.

[People v. Lawson, 67 Ill.2d 449, 367 N.E.2d 1244 \(1977\)](#) The Court established the following test to determine whether preindictment delay violates due process: “Where there has been a delay between an alleged crime and indictment or arrest or accusation, the defendant must come forward with a clear showing of actual and substantial prejudice. Mere assertion of inability to recall is insufficient. If the accused satisfies the trial court that he or she has been substantially prejudiced by the delay, then the burden shifts to the State to show the reasonableness, if not the necessity, of the delay.” If this two-step process shows both substantial prejudice and that the delay was reasonable, the court must determine, based upon a balancing of the interests of the defendant and the public, whether a due process violation has occurred. Among the factors to be considered are the length of the delay and the seriousness of the crime. The Court held that here, where the defendant established only the possibility of prejudice, no violation occurred.

[People v. Shukovsky, 128 Ill.2d 210, 538 N.E.2d 444 \(1988\)](#) Supreme Court Rule 604 (a)(4), which tolls the speedy trial term while the State appeals a pretrial suppression order, did not apply to an appeal from a contempt citation against the prosecutor for refusing to comply with a subpoena. The Court held that the appeal from the contempt order “was not an appeal on behalf of the People but rather an appeal by the Assistant State’s Attorney as the contemnor.” In addition, the State may appeal under Rule 604 (a) only where the trial court’s order substantially impairs its ability to prosecute the case, a standard not satisfied here.

[People v. Morris, 135 Ill.2d 540, 554 N.E.2d 150 \(1990\)](#) In May, 1986 an indictment was filed charging defendant with indecent liberties with a child for acts that occurred on October 20, 1984 (Count I). In February 1988, a grand jury added five additional counts for sexual acts that occurred on the same date (Counts II through VI). The trial judge dismissed only Count I because it charged an offense under a statute that had been repealed on July 1, 1984, which was before the alleged acts occurred. The Supreme Court held that the trial judge erred by failing to dismiss Counts II through VI. An indictment which shows on its face that the offense was not committed within the statute of limitations must allege facts which invoke one of the exceptions contained in the statute. Here, Counts II through VI show on their face that the indictment was brought after the three-year limitation period. Furthermore, those counts fail to allege facts that invoke one of the statutory exceptions to the limitation period. The State also contended that Count I supplied the necessary facts to invoke the statutory exception. The period within which a prosecution must be commenced does not include any period in which . . . a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal.” However, the Court found that the indictment “contains no language specifying that the limitation period should be tolled because a prosecution was pending against defendant for the same conduct involved in counts II through IV.” Thus, the State failed to specify, in any of the counts, the grounds by which it sought to toll the statutory period.

[People v. Thingvold, 145 Ill.2d 441, 584 N.E.2d 89 \(1991\)](#) An information filed June 25, 1987 charged that between December 1, 1983 and April 30, 1986, defendant solicited a man to murder his wife. The information alleged that the offense was “based upon a series of acts performed at different times.” The Supreme Court held that the information was fatally deficient because a portion of the time period alleged (i.e., 12/1/83 to 6/24/84) was beyond the three-year statute of limitations, and the State alleged no facts which would toll the statute of limitations. See also, [People v. Meier, 223 Ill.App.3d 490, 585 N.E.2d 232 \(5th Dist. 1992\)](#) (aggravated criminal sexual assault information which alleged that the offense occurred more than three years earlier was fatally defective where the State failed to allege any basis for extending the statute of limitations.)

[People v. Gulley, 83 Ill.App.3d 1066, 404 N.E.2d 1077 \(3d Dist. 1980\)](#) The trial court dismissed two unlawful sale of narcotics indictments against the defendant because of a 51-month delay between the sales and defendant’s arrest. There was a nine-month delay between the sales and the indictments, and a 42-month delay between the indictments and the arrest. Relying on [People v. Lawson](#), the Appellate Court upheld the dismissals. First, the defendant showed an actual and substantial prejudice resulting from the delay, because a delay of 51 months “causes great suspicion and a presumption that the delay was prejudicial.” For the defendant to present an alibi, he and his witnesses “would be required to recall an uneventful two days back four years.” In addition, there were discrepancies concerning the identification of the perpetrator and one eyewitness, an FBI agent, was deceased at the time of trial.

[People v. Taylor, 131 Ill.App.3d 766, 476 N.E.2d 19 \(5th Dist. 1985\)](#) In three different cases the trial court denied a second continuance requested by the State and dismissed the charges. The Appellate Court held that the dismissals were improper. The statutory grounds for dismissal do not include dismissal for want of

prosecution. Furthermore, the “due process” ground for dismissal recognized by [People v. Lawson](#) is inapplicable. Finally, after it has been found that the State has failed to act with diligence, the trial court may not dismiss charges “without granting one more court date upon which the prosecution may proceed, such date to be not less than 14 nor more than 30 days from the date of the court’s finding.”

[People v. Yaeger, 84 Ill.App.3d 415, 406 N.E.2d 555 \(3d Dist. 1980\)](#) The court dismissed several indictments because the State failed to arrest the defendant for 31 months after the indictments were returned. The Appellate Court rejected the State’s contention that the delay was caused by the defendant’s absence from the area. Defendant left the area and moved to Missouri before the indictments were returned, and without knowledge of the charges. He made no attempt to hide his whereabouts, and the State failed to show that it made an active, specific or diligent search for him.

[People v. A. Delgado, 368 Ill.App.3d 661, 858 N.E.2d 603 \(1st Dist. 2006\)](#) Where the defendant alleges that the indictment should be dismissed due to an unreasonable delay between the crime and the indictment, he has the burden of making a clear showing of actual and substantial prejudice. The mere assertion of an inability to recall is insufficient to establish prejudice. If the accused establishes substantial prejudice from the delay, the burden shifts to the State to show that the delay was at least reasonable, if not necessary. If both substantial prejudice and the reasonableness of the delay are shown, the trial court must balance the interests of the defendant and the public to determine whether the delay violated due process. Where the trial court failed to apply the above test, the Appellate Court declined to apply the test for the first time on appeal. Instead, it remanded the cause for the trial court to apply the proper standard and determine whether a 21-year delay between the crime and the indictment should have resulted in dismissal of the indictment.

[People v. Laughlin, 293 Ill.App.3d 194, 687 N.E.2d 1162 \(2d Dist. 1997\)](#) Statute tolling statute of limitations while defendant is absent from State is not unconstitutional.

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#### Cumulative Digest Case Summaries §47-2

**People v. Echols**, 2018 IL App (1st) 153156 (7/18/18)

A 477-day delay between the crime and trial did not violate defendant’s constitutional right to a speedy trial. The 182 days between the State’s nol-pros of the initial misdemeanor charges and the filing of new felony charges did not count because no charges were pending during this time. The court analyzed the remaining 295-day delay using the factors in **Barker v. Wingo**, 407 U.S. 514 (1972).

The length of the delay fell short of the one-year threshold for a presumptively prejudicial delay. The reason for this delay weighed slightly against the State; the State was negligent in finding defendant because it failed to realize he was in custody for another offense, instead believing that he was failing to appear for his arraignment. Defendant’s failure to assert his speedy trial rights during the delay was neutral in this case, because he was not aware of the pending charges. Finally, defendant could not show prejudice because he was incarcerated on other charges, and unaware of the pending charges, throughout the delay. Although he lost the ability to secure concurrent sentences, his defense was not impaired by the delay.

(Defendant was represented by Assistant Defender John Breffeilh, Chicago)

[People v. Gay, 2011 IL App \(4th\) 100009 \(No. 4-10-0009, 11/18/11\)](#)

1. Independent of statutes of limitation, the due process clause of the Fifth Amendment plays a limited role in protecting against oppressive delay between the commission of an offense and the bringing of charges. To establish a due process violation as a result of preindictment delay, the defendant must initially show that he was actually and substantially prejudiced by the delay. A witness’s inability to recall events, a witness’s unavailability, the unavailability or the destruction of evidence, or an increased

probability of a wrongful conviction may constitute cognizable prejudice resulting from preindictment delay.

The burden then shifts to the State to establish the reasonableness of the delay. If both prejudice and reasonableness of the delay are shown, the court must make a determination based on a balancing of the interests of the defendant and the public, considering, among other factors, the length of the delay and the seriousness of the offense.

2. The defendant claimed that he suffered prejudice when the State staggered its indictments so that no more than two to four charges pended against defendant at any one time, thus subverting defendant's statutory speedy-trial rights. This claim had no basis in fact where the defendant was tried 38 days after he was sentenced on previous cases, well within the 160-day period allowed by statute. [725 ILCS 5/103-5\(e\)](#).

3. Even if the preindictment delay had allowed the State to subvert defendant's right to a speedy trial, this supposed advantage did not implicate due process concerns.

A delay in bringing charges until the prosecution is certain that it can proceed to trial with reasonable speed is not a delay for a tactical purpose. The filing of an indictment constricts prosecutorial resources. It is therefore left to prosecutors to determine how much responsibility they can afford to undertake and to weigh costs with the public's interest in justice. The due process clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor's judgment as to when to seek an indictment.

Accepting the defendant's argument that unconstitutional delay results from the staggering charges to avoid running afoul of the speedy-trial statute would lead to absurd results. A defendant who commits multiple offenses in a brief period could avoid prosecution by standing on his speedy-trial rights.

(Defendant was represented by Assistant Defender Scott Main, Chicago.)

**People v. Goad, 2013 IL App (4th) 120604** (Nos. 4-12-0604 & 4-12-0605 cons., 4/30/13)

1. The inherent authority to ensure a fair trial permits the trial court to dismiss an indictment where the defendant has been denied due process because of actual and substantial prejudice resulting from pre-indictment delay. A claim of pre-indictment delay is analyzed under a two-part test. First, the defendant must make a clear showing of actual and substantial prejudice to his ability to obtain a fair trial. A mere assertion of an inability to recall is insufficient to satisfy the defendant's burden.

If the defendant makes a clear showing, the burden shifts to the State to show the reasonableness of the delay. The trial court's ruling on a motion to dismiss an indictment due to unreasonable pre-indictment delay is reviewed *de novo*.

2. Where the defendant claims that he was prejudiced by pre-indictment delay, he is entitled to relief only if he can show "actual damage to [his] ability to obtain a fair trial." The court rejected the argument that pre-indictment delay of 18 months concerning two charges of possessing a hypodermic needle caused prejudice because it disrupted defendant's ability to leave the State to accept a job after he completed a sentence imposed on a guilty plea conviction for possession of a controlled substance. When defendant entered the plea for possession of a controlled substance, the State had knowledge of the hypodermic needle offenses but had decided not to file charges. The charges were brought after defendant had completed his sentence and MSR requirements in the guilty plea case, when defendant was planning to move to Arizona to accept a job.

The court concluded that the alleged prejudice to defendant's job prospects and continued rehabilitation constituted mere speculation concerning possible inconvenience, and was not the type of prejudice which justified shifting the burden to the State to show that the pre-indictment delay was reasonable.

3. The court also rejected the argument that defendant suffered substantial prejudice because the delay in bringing charges until he entered a guilty plea on another charge allowed the State to circumvent the statutory limitations on consecutive sentences. Unlike [People v. Bredemeier, 346 Ill. App. 3d 557, 805 N.E.2d 261 \(5th Dist. 2004\)](#), where the delay deprived the defendant of an opportunity to serve an Illinois sentence concurrently with an Indiana sentence, defendant's arguments concerning consecutive sentencing

demonstrated only the possibility of prejudice. The court also noted that defendant and his attorney were aware of the possibility of the additional charges when they negotiated the guilty plea agreement, and could have sought to include those offenses in the disposition.

The trial court's order granting defendant's motion to suppress was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

[People v. Kilcauski, 2016 IL App \(5th\) 140526 \(No. 5-14-0526, 8/31/16\)](#)

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs "a little less heavily." Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the "unique" circumstances of this case, defendant's constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff's department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant's return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been released from the custody of the Clinton County sheriff's department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. "Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant's constitutional right to a speedy trial was violated. Defendant's restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

#### **[People v. Staake, 2016 IL App \(4th\) 140638 \(No. 4-14-0638, 11/10/16\)](#)**

1. The speedy trial statute requires that a criminal defendant who is in custody must be tried within 120 days of the date on which he or she was taken into custody, excluding any delay which the defendant occasioned. The remedy for a violation of the speedy trial statute is dismissal of the charges.

Where the State initially charges one offense and later charges an additional offense, delays attributable to the defense on the initial charges are not attributable to it on the subsequent charges if the additional charges were subject to the compulsory joinder statute. [720 ILCS 5/3-3](#). Generally, the compulsory joinder statute requires that when the State knows that an act may constitute more than one offense, all offenses must be prosecuted in a single proceeding.

2. Because second degree murder is a lesser mitigated offense of first degree murder, when the State charges second degree murder it is conceding that if it is able to prove the elements of first degree murder, there is sufficient mitigation to reduce the offense to second degree murder. Thus, when the State files second degree murder charges and subsequently files first degree murder charges, it is merely withdrawing its concession concerning the element of mitigation.

In such a case, the State's burden is the same - to prove the elements of first degree murder. Because first degree murder is not a new and additional charge, the compulsory joinder statute is not implicated.

The court acknowledged that its decision was inconsistent with [People v. Izquierdo-Flores, 367 Ill. App. 3d 377, 854 N.E.2d 1156 \(2d Dist. 2006\)](#), which held that where second degree murder is originally charged and first degree murder is subsequently charged based on the same act, first degree murder is a new and subsequent charge that is subject to compulsory joinder. The court found that **Izquierdo-Flores** was wrongly decided because the compulsory joinder statute does not state that it applies to a mitigating factor which the defendant must prove to reduce first degree murder to second degree, and because a charge of second degree murder necessarily includes an allegation of the elements of first degree murder.

Because first degree murder was not a new charge where the State originally filed second degree murder charges, compulsory joinder did not apply. Thus, delay to which the defense acquiesced on the second degree allegation is also charged against the defense concerning first degree murder.

(Defendant was represented by Assistant Defender Allen Andrews, Springfield.)

#### **People v. Sykes, 2017 IL App (1st) 150023 (12/26/17)**

Where the State charges a defendant with DUI based on alcohol intoxication, but test results later reveal intoxication caused by drugs, the DUI-drugs charge is not subject to compulsory joinder until the State becomes aware of the test results. The State is not obligated to charge DUI-drugs based merely on an arresting officers's suspicion that defendant may have been under the influence of drugs, as this suspicion, without actual test results, would be insufficient to secure a conviction. Moreover, while there was a delay in obtaining the medical records and test results, the delay was the result of the State's inadvertent use of defendant's married name rather than the maiden name defendant provided to the hospital.

(Defendant was represented by Assistant Defender Roxanna Mason, Chicago.)

**People v. Whitlock**, 2018 IL App (1st) 152978 (12/28/18)

For purposes of the compulsory joinder rule, knowing first-degree murder and reckless homicide are not "new and additional" charges to felony murder. Therefore, the State could charge defendant with knowing murder and reckless homicide over 120 days after initially charging defendant with felony murder based on the same conduct. Moreover, defendant could not show prejudice given that he waited over three years to move to dismiss the new charges. Under these circumstances he could not credibly claim "trial by ambush" such that he needed the protection of the compulsory joinder rule.

(Defendant was represented by Assistant Defender Maria Harrigan, Chicago.)

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§47-3

**"In Custody" on Multiple Charges**

[Smith v. Hooey](#), 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969) Where defendant had a pending indictment in state court while he was in federal custody, the State had a duty, upon demand by defendant, to make a diligent, good faith effort to bring him to trial in state court. The mere fact that defendant was in federal prison does not absolve State from its duty under the speedy trial provision. See also, [Dickey v. Florida](#), 398 U.S. 30, 90 S.Ct. 1564, 26 L.Ed.2d 26 (1970); [People ex rel. Mathes v. Carter](#), 43 Ill.2d 248, 252 N.E.2d 543 (1969).

[People v. Brown](#), 92 Ill.2d 248, 442 N.E.2d 136 (1982) The defendant was simultaneously in custody on three charges. He was not brought to trial within 160 days on the instant charge, as is required by ¶103-5(e). The trial court dismissed the charge, and the Supreme Court upheld the dismissal, rejecting the argument that the State's *mandamus* action in another of the three cases tolled the speedy trial term in this case. The Court noted there is no provision tolling the speedy trial term when an interlocutory appeal is taken in another case, there was no relationship between the interlocutory appeal and the delay and the State repeatedly pointed out in the trial court that the delay here was due solely to its inability to locate a witness.

[People v. Davis](#), 97 Ill.2d 1, 452 N.E.2d 525 (1983) Defendant was in custody in St. Clair County awaiting trial. Pursuant to a *habeas* writ he was brought to Madison County on January 1, 1980 for arraignment and a preliminary hearing. He was then returned to St. Clair County. Defendant was again brought to Madison County on April 29, 1980, at which time he demanded trial. The prosecutor stated that he would not prosecute until the trials in St. Clair County were completed. After the proceedings in St. Clair County were concluded on December 5, 1980, defendant was brought to trial in Madison County on March 12, 1981. The Supreme Court held that defendant was not "in custody" in Madison County until the proceedings in St. Clair County were concluded. Thus, defendant was brought to trial within 120 days. See also, [People v. Wiseman](#), 195 Ill.App.3d 1062, 553 N.E.2d 46 (5th Dist. 1990).

[People v. Goins](#), 119 Ill.2d 259, 518 N.E.2d 1014 (1988) Defendant was taken into custody on July 7, 1983

in Kane County. An indictment was returned for residential burglary, based upon the prosecutor's belief that the burglarized residence was in Kane County. It was later discovered that the burglarized residence was in DuPage County, and defendant was charged in that county on November 22, 1983. On November 30, the Kane County charge was *nol-prossed* and defendant was transferred to the DuPage County jail. On February 23, 1984, before trial in DuPage County, defendant moved for a speedy trial discharge. The trial judge denied the motion, finding that the speedy trial term commenced on November 30, 1983, the date on which the circuit court of DuPage County first had jurisdiction to try defendant. The Supreme Court reversed the conviction, agreeing with defendant's contention that because he was in custody for the same offense subsequently charged in DuPage County, the speedy trial term commenced when he was taken into custody in Kane County.

[People v. Arnhold, 115 Ill.2d 379, 504 N.E.2d 100 \(1987\)](#) The defendant was arrested and charged with aggravated kidnapping. He posted bond and was released. Subsequently, he was arrested on an unrelated charge. Defendant contended that he was denied a speedy trial on the aggravated kidnapping charge because he was in "simultaneous custody" following his arrest on the unrelated charge and was not brought to trial within 120 days. The Supreme Court held that a "defendant who is out on bond on one charge, and who is subsequently rearrested and returned to custody on another charge, is not returned to custody on the first charge until his bond is withdrawn or revoked." Thus, although defendant was *physically* in custody following his arrest on the unrelated charge, he was not "simultaneously" in custody on multiple charges until he withdrew his bond on the aggravated kidnapping charge.

[People v. Staten, 159 Ill.2d 419, 639 N.E.2d 550 \(1994\) 730 ILCS 5/3-8-10](#) embodies a special statute for inmates of the Illinois Department of Corrections. Under this statute, the speedy trial period begins to run only where the inmate files a speedy trial demand addressed to the State's Attorney of the county in which the charges are pending and stating his current place of confinement, the term on which he is being held, the length of his remaining term, the charges pending against him, and the counties in which those charges are pending. A general speedy trial demand was insufficient to trigger the speedy trial term for an individual already serving a sentence in the Department of Corrections. Although the State knew defendant's location and therefore suffered no prejudice from the omission of the matters required by statute, the speedy trial period begins to run only where there is full compliance with the applicable statute. See also, [People v. Wiseman, 195 Ill.App.3d 1062, 553 N.E.2d 46 \(5th Dist. 1990\)](#) (when defendant is committed to the Department of Corrections and has another charge pending in any county, he must be tried on the other charge within 160 days of his written speedy trial demand); [People v. Smith, 42 Ill.App.3d 731, 356 N.E.2d 656 \(5th Dist. 1976\)](#) (Ch. 38, ¶1003-8-10 applies to an offense committed by an inmate during his term of imprisonment, and is not limited to persons who on the date of their commitment to the Department have other untried charges pending in another county or counties).

[People v. Kliner, 185 Ill.2d 81, 705 N.E.2d 850 \(1998\)](#) Under [725 ILCS 5/103-5\(e\)](#), where a defendant is simultaneously in custody for multiple offenses, the State is required to bring him to trial on one of the offenses within 120 days of his arrest and on the remaining charge within 160 days after judgment is rendered on the first charge. However, the State is not precluded from changing its election as to the charge it will try first. Where the prosecutor changed his election because he needed more time to investigate one of the cases, "[t]he record does not show that the State changed its election as an act of subterfuge to delay proceeding to trial" on the first charge.

[People v. Hillsman, 329 Ill.App.3d 1110, 769 N.E.2d 1100 \(4th Dist. 2002\)](#) The court declined to decide whether a defendant who is charged with a crime and also in custody on a parole hold is required to file a demand for trial in order to invoke the protections of the Speedy Trial Act. The record did not indicate whether defendant filed a trial demand on the original charges, but the State failed to argue that such a

demand was necessary. Where a defendant serves continuous custody on criminal charges and a related parole hold, the speedy trial term runs 120 days from the filing of the criminal charges, excluding any delay by the defense. In addition, the State's decision to *nol pros* and refile identical charges on the 112<sup>th</sup> day of custody was an improper attempt to circumvent the 120-day speedy trial term; the statutory speedy trial term is not tolled by a dismissal motion by which the prosecution intends to delay or avoid the right to a speedy trial.

[People v. Kerley, 72 Ill.App.3d 916, 391 N.E.2d 225 \(2d Dist. 1979\)](#) The defendant was in the Cook County Jail, unable to make bond, when a detainer warrant was lodged against him by DuPage County. On April 7, 1977 there was a complete disposition of all the Cook County charges (defendant pleaded guilty to some and the others were dismissed). Defendant was sentenced to 30 days in jail and, with credit, was released on April 22, 1977. On the same day, he was arrested by DuPage County authorities and held in custody. On August 9, defendant moved for discharge because he had not been brought to trial within 120 days from April 7. The Appellate Court held that the speedy trial term commenced on April 7, when the dispositions were entered on the Cook County charges. Thus, DuPage County authorities were required to bring their charge to trial within 120 days from the termination of the Cook County proceedings. The Court found no authority for the State's position that the speedy trial term does not commence until a previous sentence is discharged.

[People v. Hollowell, 78 Ill.App.3d 515, 397 N.E.2d 245 \(2d Dist. 1979\)](#) A defendant is not "simultaneously in custody on more than one charge," when a felony charge and a petition to revoke probation are pending against him. A petition to revoke probation is not a "charge" within the meaning of the speedy trial statute; thus, the defendant was entitled to be tried within 120 days on the felony charge regardless of any proceedings on the petition to revoke.

[People v. Clark, 188 Ill.App.3d 130, 544 N.E.2d 32 \(5th Dist. 1989\)](#) Defendant was not in the custody of the St. Clair County Jail, so as to trigger the 120-day speedy trial rule, where he was physically present in the jail as a federal prisoner but was not being held on State charges.

[People v. Stanley, 266 Ill.App.3d 307, 641 N.E.2d 1224 \(3d Dist. 1994\)](#) Where new and additional charges are filed based upon the same facts as the original charges, and the State knew all the facts at the commencement of the prosecution, the speedy trial limits that apply to the original charge also apply to the new charges. Furthermore, continuances obtained by the defendant on the original charges are not attributable to the defense on the new charges, which were not before the court when the continuances were requested. Here, the prosecutor clearly knew of the facts underlying the new charges when he filed the original charge. Therefore, defendant's speedy trial rights on the new charges were violated.

[People v. Cavitt, 246 Ill.App.3d 514, 616 N.E.2d 666 \(5th Dist. 1993\)](#) Defendant posted bond on a murder charge and filed a speedy trial demand. While on bond, he was arrested and held in custody on an unrelated drug charge. The State did not move to revoke the bond on the murder charge, and the drug charge was tried first though no speedy trial demand had been made in that case. The trial court then dismissed the murder charge on the ground the State had violated defendant's speedy trial rights. The Appellate Court reversed the dismissal order. [725 ILCS 5/103-5](#) provides that a person in custody must be tried within 120 days from the date he was taken into custody, and that a person on bail or recognizance must be tried within 160 days of his demand for trial. Section 103-5(e) provides that where an accused "simultaneously demands trial" on more than one charge he "shall be tried upon at least one such charge before expiration relative to any of such pending charges. Such person shall be tried upon all of the remaining charges . . . within 160 days from the date on which judgment relative to the first charge . . . is rendered." The Court held that this defendant should be deemed to have made "simultaneous demands" for speedy trial. Although an actual demand was filed only in the murder case, the speedy trial period for persons in custody runs automatically and does not depend on

a demand being made. Thus, an implied speedy trial demand was "automatically" made in the drug case because defendant was in custody. However, because defendant had demanded trial on more than one charge and the drug case was tried within 120 days, under ¶103-5 the State had an additional 160 days to try the murder case.

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**Cumulative Digest Case Summaries §47-3**

**[People v. Sandoval, 236 Ill.2d 57, 923 N.E.2d 292 \(2010\)](#)**

730 ILCS 5/3-8-10 provides that a defendant who has been committed to a DOC facility and who has pending charges in any county may demand a speedy trial on those charges by filing a demand with the State's Attorney and the circuit clerk. The demand must indicate the place at which the defendant is confined, the length of the remaining sentence, the pending charges on which a speedy trial is sought, and the county in which the charges are pending.

A defendant who had multiple DUI charges in DuPage County, and who had been committed to the Department of Corrections on an unrelated charge from Cook County, failed to file an effective speedy trial demand where his demand sought a speedy trial on "DuPage County DUI," without indicating a case number or any other basis on which his three DuPage County DUI charges could be differentiated. The court stated:

It is not unreasonable to require that defendants demanding a speedy trial under the provisions of §3-8-10 specify the charges to which their demands pertain. That is not to say that case numbers are necessarily required in the demand; however, if they are not included, other adequate indicia of identification must be provided, such as the name of the charge and the date upon which the offense was allegedly committed. It is not enough to say "Du Page County DUI" if a defendant has 10 such charges pending - or even three in two different cases.

The court also noted that the defendant had received documents which contained the case numbers for at least two of the DUIs, and stated that a defendant who seeks to file a speedy trial demand can easily communicate with the circuit clerk to ascertain the case numbers of the pending charges.

Because the defendant's speedy trial demand was insufficient, the order dismissing the DUI charges was reversed.

**[People v. Kilcauski, 2016 IL App \(5th\) 140526 \(No. 5-14-0526, 8/31/16\)](#)**

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs "a little less heavily." Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the "unique" circumstances of this case, defendant's constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff's department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition

proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant's return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been released from the custody of the Clinton County sheriff's department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. "Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant's constitutional right to a speedy trial was violated. Defendant's restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

### [People v. Larue, 2014 IL App \(4th\) 120595 \(No. 4-12-0595, 5/14/14\)](#)

Under the speedy trial statute, a defendant in custody must be brought to trial within 120 days of the day he was placed in custody. [725 ILCS 5/103-5\(a\)](#). The speedy-trial period is tolled during any period of delay caused by defendant. But where the State brings new and additional charges that are subject to compulsory joinder with the original charges, delay caused by defendant on the initial charges will not be

attributed to defendant on the new charges. The compulsory joinder statute requires the State to prosecute in a single case all known offenses that are based on the same act. [720 ILCS 5/3-3\(b\)](#).

The speedy-trial rule regarding new charges, however, does not apply to included offenses. An indictment for an offense serves as an indictment for all included offenses, and thus all included offenses are deemed to be before the court when any continuances are granted.

Here, the State initially charged defendant with aggravated unlawful use of a weapon (AUUW), and then after defendant had been in custody for over 120 days, added the charge of unlawful possession of a weapon by a felon (UPWF). Although UPWF would normally be considered a lesser included offense of AUUW since both charges are premised on possessing a firearm while having a previous felony conviction, defendant argued that because UPWF carries a greater maximum penalty than AUUW, it is not a lesser-included offense. (AUUW is a Class 2 felony with a sentencing range of three to seven years imprisonment; UPWF is a Class 3 felony with a range of two to 10 years imprisonment.)

The court rejected this argument, holding that despite the greater maximum sentence for UPWF, it was still a lesser-included offense of AUUW. All of the elements of UPWF were contained within AUUW and thus defendant was on notice that UPWF was a possible charge when he requested continuances. Hence there was no speedy-trial violation when the State added the UPWF charge.

(Defendant was represented by Assistant Defender Marty Ryan, Springfield.)

### [People v. Mullins, 404 Ill.App.3d 922, 942 N.E.2d 527 \(4th Dist. 2010\)](#)

The Intrastate Detainers statute provides the method by which a defendant in custody of the Illinois Department of Corrections can assert his statutory right to a speedy trial on charges pending in an Illinois county. [730 ILCS 5/3-8-10](#). The defendant must send a written demand for trial to the State's Attorney and the circuit court clerk of the county where the charge is pending, and to the chief administrative officer of the institution where the defendant is being held. The demand must identify: (1) the place where the defendant is being held; (2) the term of the commitment; (3) the length of the term remaining; (4) the pending charge; and (5) the county where the charge is pending.

Defendant, an inmate at Graham Correctional Center, sent a demand for trial to the circuit court clerk in Vermilion County, where an information had been filed against him and a warrant issued for his arrest. He included his name, inmate number, the name of his warden, his sentence, his release date, his date of birth, and described the pending charge as possession with intent to deliver, and included an incorrect case number. A notice of filing supported by affidavit stated that defendant had placed copies of the notice in the institutional mail on a date certain with postage prepaid addressed to the State's Attorney, the circuit court clerk and the warden, but did not include addresses for the State's Attorney and the clerk. The circuit court clerk received a copy of the demand and on March 12, 2009, the court ordered the clerk to forward a copy to the State's Attorney. The defendant moved for discharge under the speedy trial statute in October 2009.

The demand that the defendant sent met the requirements of §3-8-10 even though it included an incorrect case number and described the pending charge as possession with intent to deliver, rather than possession of a controlled substance with intent to deliver. The statute does not require a case number, failing to include "controlled substance" in the description of the charge did not cause confusion, and the other information supplied by the defendant provided a means for the State's Attorney to identify the one case pending against the defendant.

There was no deficiency in service even though the notice of filing did not include the complete address of the State's Attorney and the clerk. The clerk of the court received its copy of the demand so there was no reason to believe that the envelope mailed to the State's Attorney was not sufficiently addressed. Any theoretical deficiency in the service was remedied when the circuit court ordered the clerk to supply the State's Attorney with a copy of the demand. There was no requirement that the defendant demonstrate that the State's Attorney actually received the demand. Nor could the State's Attorney's mere allegation of non-receipt negate the notice where defendant had complied with the Intrastate Detainers statute.

The Appellate Court affirmed the circuit court's order allowing defendant's motion to dismiss for

violation of his statutory right to a speedy trial.

(Defendant was represented by Assistant Defender Amber Gray, Springfield.)

**[People v. Payne, 2015 IL App \(2d\) 120856 \(No. 2-12-0856, 3/9/15\)](#)**

The Interstate Agreement on Detainers is a uniform compact adopted by 48 states, including Illinois and Wisconsin. The agreement establishes the procedure for bringing a defendant imprisoned in one to trial on charges pending in another, and permits a defendant to request a final disposition of an untried charge. When a defendant makes such a request, he must be tried within 180 days after he has delivered to the prosecutor and the trial court written notice of his place of imprisonment and his request for a final disposition. The defendant must send a written notice of his request for final disposition to the prison officials, who in turn must promptly forward the request to the prosecutor and trial court. [730 ILCS 5/3-8-9](#), art. III.

Defendant was charged with various offenses in Illinois while he was serving a prison sentence in Wisconsin. The Illinois prosecutors received a letter from the Wisconsin prison officials which included a written request from defendant for a final disposition of the untried charges in Illinois. The letter also stated that it was “carbon copied” to the trial court in Illinois.

Defendant argued that they violated the detainer agreement by failing to bring him to trial within 180 days of the date the prosecutors received his request for a final disposition. The Appellate Court disagreed. It held that the request must actually be delivered to both the prosecutor *and* the trial court before the 180-day period begins. The record, however, only shows that the request was delivered to the prosecutors and mailed to the trial court. There was no showing that the request was actually delivered to the trial court. Consequently, there was no showing that the 180-day period began to run.

Defendant’s convictions were affirmed.

(Defendant was represented by Supervisor Josette Skelnik, Elgin.)

**[People v. Raymer, 2015 IL App \(5th\) 130255 \(No. 5-13-0255, 2/25/15\)](#)**

1. [725 ILCS 5/103-5\(e\)](#) provides that where a defendant is simultaneously in custody on unrelated charges, the State may elect to try one of the charges within the normal statutory speedy trial period. The prosecution is then afforded an additional 160 days to bring the defendant to trial on the remaining charges. The intent of §103-5(a) is to preserve the defendant’s right to a speedy trial while mitigating the State’s burden to prepare more than one charge for trial.

The court rejected the State’s argument that the prosecutor’s election of a charge to try first tolls the speedy trial term on the remaining charges, so that the term on those charges does not run even if the State fails to bring the first charge to trial. The court concluded that the State must try or obtain a guilty plea on at least one of the pending charges within the normal speedy trial period. If it does so, it receives another 160 days to try the remaining charges.

2. Where the State elected to try a driving on revoked license charge first, but the 120-day speedy trial term expired on that offense without the State either bringing the case to trial or obtaining a guilty plea, the 120-day speedy trial terms also expired on escape and unlawful use of a credit card charges which the State had elected to try second. “The State cannot obtain more time to try the unelected charges by virtue of its own failure to bring the elected charge to trial within the requisite time.”

The trial court’s order dismissing all of the charges was affirmed.

(Defendant was represented by Assistant Defender Larry O’Neill, Mt. Vernon.)

**[People v. Smith, 2016 IL App \(3d\) 140235 \(No. 3-14-0235, 6/9/16\)](#)**

1. Under the speedy trial statute, a defendant must be tried within 120 days from the date he was taken into custody unless he has caused delay. [725 ILCS 5/103-5\(a\)](#). A defendant does not need to demand trial to begin the 120-day period. Under the intrastate detainer statute, however, a defendant committed to the Illinois Department of Corrections must demand trial before the statutory speedy trial period of 160 days

begins to run. [730 ILCS 5/3-8-10](#).

When a defendant is in custody awaiting trial in one county and charges are pending against him in another county, the 120-day speedy trial period does not begin to run until the proceedings in the first county end and defendant is held in custody by the second county. In order to be held in custody by the second county, the second county must serve a warrant on defendant while he is still incarcerated in the first county.

2. Defendant was indicted for an offense in Peoria County on March 20, 2012. At that time, defendant was incarcerated in Sangamon County awaiting trial for a Sangamon County offense. On June 24, 2012, an arrest warrant for the Peoria County offense was served on defendant. On June 11, 2013, defendant was sentenced for the Sangamon County offense. On July 12, 2013, defendant was transferred to the Illinois Department of Corrections. On August 8, 2013 defendant was transferred to Peoria County and arraigned. Defendant answered ready for trial and the State sought several continuances. On October 24, 2013, defendant made a motion to dismiss based on a speedy trial violation. The trial court denied the motion.

3. The Appellate Court held that the State failed to bring defendant to trial within 120 days in violation of the speedy trial statute. Defendant was not committed to the DOC at the time he was sentenced in the Sangamon County case. Instead, defendant had been served with a warrant in the Peoria County case while he was awaiting trial in the Sangamon County case. As soon as defendant was sentenced in the Sangamon County case, the proceedings in that case terminated and the custody of defendant was legally transferred to Peoria County. Accordingly, the 120-day speedy trial period applied to defendant rather than the 160-day period that would have applied if defendant had been in the custody of the DOC.

Since the State failed to bring defendant to trial within 120 days, the Appellate Court ordered the charges against him dismissed.

(Defendant was represented by Assistant Defender Lucas Walker, Ottawa.)

#### **People v. Thomas, 2014 IL App (2d) 130660 (No. 2-13-0660, 5/29/14)**

The State charged defendant with misdemeanor DUI (based on impairment) by means of a verified complaint filed by the police. Over 160 days after defendant filed a demand for speedy trial, the prosecutor's office filed an information charging defendant with DUI (based on blood alcohol levels).

1. The second DUI charge was properly dismissed on speedy trial grounds. Under [725 ILCS 5/103-5\(b\)](#), the State must try a defendant within 160 days of the date defendant demands trial unless delay is caused by defendant. When the State files additional charges that arose from the same facts as the original charges, any delay caused by defendant will not be applied to the new charges in determining whether there has been a speedy trial violation. This rule only applies to charges that are subject to compulsory joinder, which requires the prosecution to join all known charges arising from the same act. [720 ILCS 5/3-3](#).

Here the State added the new charge of DUI after 160 days had passed, and since that charge was subject to compulsory joinder, none of the delay caused by defendant could be considered against the second DUI charge, and thus it was barred by the speedy trial statute.

2. The second DUI charge was subject to compulsory joinder even though the first charge was filed by the police in a verified complaint. In [People v. Jackson, 118 Ill. 2d 179 \(1987\)](#), the Illinois Supreme Court held that compulsory joinder did not apply where the initial charges were traffic offenses filed in a complaint by the police and the new charges were felonies filed by the prosecutor in an information or indictment.

**Jackson** did not apply to this case because here both the initial DUI and the new DUI charges were misdemeanors that could have been filed by the police through verified complaints. A felony, by contrast, can only be filed through an indictment or information. Since the vast majority of traffic and misdemeanor cases are charged by the police, expanding **Jackson** to the current situation would mean that compulsory joinder would almost never apply to misdemeanors, an outcome that would be "absurd and ill-advised."

#### **People v. Thompson, 2012 IL App (2d) 110396 (No. 2-11-0396, 11/13/12)**

1. Where a defendant is simultaneously in custody for more than one charge, the State is required

to bring the defendant to trial on one of those charges within 120 days of arrest and must try the defendant on the remaining charge within 160 days from the rendering of judgment on the first charge. [725 ILCS 5/103-5\(e\)](#). The State has the right to change its election. The speedy-trial clock is tolled in the unelected matter when the State initially elects to bring a defendant to trial first on unrelated charges, and the speedy trial clock is also tolled if the State changes its original election, absent subterfuge.

Defendant was in custody on unrelated misdemeanor and felony charges. The State elected on the felony charge, and later changed its election to the misdemeanor charges. Defendant was tried on the misdemeanor charges within 120 days of the date that the State changed its election, and therefore there was no speedy-trial violation. The Appellate Court rejected defendant's argument that when the State changed its election, the speedy-trial clock on the misdemeanor charges related back to the date that the defendant was taken into custody on those charges.

2. The Appellate Court further concluded that regardless of the change of the election, defendant's speedy-trial rights were not violated. "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date [the defendant] was taken into custody unless delay is occasioned by the defendant . . . Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." [725 ILCS 5/103-5\(a\)](#).

Defendant agreed to the delay of his trial within the meaning of §103-5(a) from the date that he was taken into custody on the misdemeanor charges until the date that the State changed its election. Under §103-5(a), a defendant is considered to have agreed to a delay unless he objects to the delay by making a written demand for trial or an oral demand for trial on the record. Defendant did neither and therefore he agreed to the delay. Merely answering ready for trial and objecting to a continuance is not a sufficient demand under the statute.

(Defendant was represented by Panel Attorney John Young.)

[People v. Wigman, 2012 IL App \(2d\) 100736 \(No. 2-10-0736, 11/8/12\)](#)

1. Under 725 ILCS 5/103, a person who is in custody must be tried 120 days, and a person who is on bail or recognizance and who demands trial must be tried within 160 days from the date of the demand. A speedy trial demand need not take any particular form so long as it clearly conveys that the defendant seeks a speedy trial.

The court distinguished between physical custody of a defendant and custody for speedy trial purposes. Thus, even where a defendant is in simultaneous custody of more than one county, for speedy trial purposes he is not in custody in the second county until the proceedings in the first county have been terminated. This is true even if the defendant has made court appearances in the second county.

2. Where the defendant was in custody in Will County, but was brought to Kendall County for appearances in his DUI case, for speedy trial purposes he was not "in custody" in Kendall County until the Will County proceedings were concluded. Furthermore, because the defendant was in fact simultaneously in the custody of both counties, a speedy trial demand which he filed in Kendall County had no effect. Thus, the 120-day speedy trial term did not begin to run in Kendall County until the Will County proceedings were completed.

The court rejected defendant's argument that although he was in the physical custody of Will County, he was on bail in Kendall County when he filed his speedy trial demand. Defendant argued that the State therefore had 160 days from the demand to try the case in Kendall County.

First, because throughout the Kendall County proceedings defendant took the position that he was in custody for the Kendall County case, he is estopped from arguing on appeal that he was on bail at the time of his demand. Second, defendant received pretrial sentencing credit for 182 days in the Kendall County case, which would not have been possible had he actually been on bail. Third, although defendant had posted bail in Kendall County, an arrest warrant was issued when he failed to appear because of his incarceration in Will County. Thus, had defendant been released in Will County, he would have immediately been arrested

on the Kendall County warrant.

3. The court added that even had defendant's Kendall County speedy trial demand been effective, the statutory right to a speedy trial was not violated. The court concluded that defendant's failure to appear in Kendall County resulted in the waiver of his speedy trial demand, although he failed to appear because he had been arrested in Will County. The court rejected the argument that a failure to appear should not be treated as a waiver where defendant was incarcerated by another county, finding that holding otherwise would "open a new procedural loophole which defense counsel could unconsciously use to obstruct the ends of justice." The court did state, however, that it "might be willing to accept defendant's argument if there was any evidence in the record to suggest that defendant made attempts to contact the court, his counsel, or the State's Attorney."

Because defendant's speedy trial demand was not effective, there is no ground on which counsel could have filed a speedy trial motion for discharge. Defense counsel was not ineffective, therefore, and defendant's conviction was affirmed.

(Defendant was represented by Assistant Defender Paul Rogers, Elgin.)

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§47-4

#### **Release From Custody; Dismissal of Charge**

[U.S. v. McDonald, 456 U.S. 1, 102 S.Ct. 1497, 71 L.Ed.2d 696 \(1982\)](#) Defendant was charged with murder, but the charge was dismissed following a finding of no probable cause. About five years later defendant was indicted for the same offense. Defendant contended that he had been denied a speedy trial. The Court held that the speedy trial period does not run while the defendant is neither under arrest nor formally charged. Thus, the period ceased to run when the original charge was dismissed, and did not begin to run again until the subsequent indictment.

[People v. Hamblin, 217 Ill.App.3d 460, 577 N.E.2d 544 \(4th Dist. 1991\)](#) Defendant alleged that he had been held in custody more than 120 days without being tried and without any defense delay. Although defendant had been held more than 120 days, his days of custody were not continuous, but involved being released on bail and having bond subsequently revoked. The trial judge denied a motion for discharge, ruling that the 120-day period had to be continuous. The Court held that a requirement of continuous custody would render meaningless ¶103-5(f), which "clearly contemplates the adding together of periods of custody after any delay occasioned by the defendant has ceased."

[People v. Decatur, 191 Ill.App.3d 1034, 548 N.E.2d 509 \(1st Dist. 1989\)](#) The Appellate Court reversed a dismissal order after discussing the application of the speedy trial statute in three "dismissal and reinstatement" situations. When a charge is dismissed after a judicial determination of lack of probable cause at the preliminary hearing, the speedy trial statute is no longer applicable. Thus, the statutory period begins anew when the charge is refiled. When a charge is dismissed on the State's request that it be stricken with leave to reinstate, the statutory speedy trial term continues to run if the defendant is in custody or has demanded trial. This is because the charges are still pending and the prosecution is not effectively terminated, but merely suspended until resurrected on the State's motion. When a charge is *nolle prossed*, the speedy trial term is tolled during the period of time the charge is no longer pending. The term, however, will run again if the charge is refiled. However, an exception to this rule exists "if it is determined the state engaged in technical maneuvering to cause delay or avoid statutory limitations, the speedy-trial term will not be deemed tolled. In those instances the statutory term will continue to run as of the date of the first filing or the first demand for trial.' Here, the State's request was not made to gain some tactical advantage over the defendant or to otherwise frustrate the speedy trial statute. Instead, the State's motivation for the *nolle*

*prosequi* was based upon the lack of sufficient evidence against defendant (i.e., the lack of the laboratory analysis).

[People v. Stinnett, 166 Ill.App.3d 1027, 520 N.E.2d 1204 \(4th Dist. 1988\)](#) On January 27, 1987 defendant was charged. On February 8 he was released on bond and filed a speedy trial demand. Due to the unavailability of a key witness, the State filed a “Motion for Nolle Prosequi with Leave to Reinstate.” On April 14, the motion was granted over defense objection, and defendant was released from his bond. On July 7 defendant was indicted for the same offense, and on August 7 he filed a motion to dismiss because he had not been brought to trial within 160 days of his demand. The Appellate Court held that a *nolle pros* tolls the speedy trial period because it terminates the pending charges against the defendant. Once a charge is *nolle prossed*, the State is required to institute a new proceeding in order to prosecute for the dismissed offense. The Court further stated that the speedy trial provisions do not apply if a defendant is not in custody, on bond, or on recognizance. Once the original charge was *nolle prossed*, the defendant had no charge pending and was not in custody or on bond or recognizance. The Court observed that the State in no way attempted to evade the provisions of the speedy trial rule or to deny defendant his constitutional right to a speedy trial. . . .”

[People v. Wey, 34 Ill.App.3d 916, 341 N.E.2d 83 \(4th Dist. 1976\)](#) Defendant was in custody for 75 days when the State *nolle prossed* the charge. He was then reindicted on the same charge and held in custody for 56 more days before he was tried. The Court held that the discharge of defendant after the *nolle pros* did not eliminate the first 75 days of custody from the 120-day term. Defendant was held in custody for 131 days without trial, and properly discharged.

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**Cumulative Digest Case Summaries §47-4**

[People v. Kilcauski, 2016 IL App \(5th\) 140526 \(No. 5-14-0526, 8/31/16\)](#)

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs “a little less heavily.” Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the “unique” circumstances of this case, defendant’s constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff’s department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant’s return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been

released from the custody of the Clinton County sheriff's department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. "Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant's constitutional right to a speedy trial was violated. Defendant's restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

### [People v. Totzke, 2012 IL App \(2d\) 110823 \(No. 2-11-0823, 8/3/12\)](#)

1. The right to a speedy trial guaranteed by the Sixth Amendment applies only within the confines of a formal criminal prosecution, *i.e.*, once a defendant has been arrested or charged. Absent bad faith, whether the Sixth Amendment right to a speedy trial applies in the period after the cessation of criminal proceedings and before reinstatement of the criminal charges depends on whether the cessation actually terminates, or only suspends, the proceedings.

In Illinois, a *nolle prosequi* is akin to the dismissal of charges, reverting the matter to the same condition that existed before the commencement of the prosecution. The charges are terminated. To reinstate, the State must file a new charging instrument, and the statute of limitations imposes a limit on the length of time in which new charges may be filed. The statutory speedy-trial period stops running unless there is evidence that the State sought to evade the statute through the use of the *nolle prosequi*. Therefore, the Sixth Amendment right to a speedy trial does not apply to any period of delay after a *nolle prosequi* and prior to

reindictment.

2. The constitutional guarantee of due process applies more broadly than the Sixth Amendment right to a speedy trial. Due process is the proper test for considering whether the period of delay between a *nolle prosequi* and the filing of new charges is constitutionally acceptable. To constitute a due process violation, it must be shown that the delay between the crime and the arrest or charge caused substantial prejudice to the defendant's right to a fair trial, and that the delay was an intentional device to gain tactical advantage over the accused.

The Appellate Court remanded the cause for the trial court to make factual findings regarding these two prongs of the due-process test because in some respects the findings of fact that the trial court had made in ruling on the defense motion to dismiss were inconsistent. To avoid fact finding by the Appellate Court, the weighing of relevant factors should be done by the trial court.

3. Four factors are considered in determining whether a defendant's constitutional right to a speedy trial is violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his or her right to a speedy trial; and (4) the prejudice to the defendant as a result of the delay.

The threshold question is whether the delay is presumptively prejudicial. If the delay is presumptively prejudicial, the court should balance the remaining three factors. One year is the generally-recognized dividing point between ordinary and presumptively-prejudicial delay.

In this case, 877 days elapsed between the date of the commencement of the first prosecution and the date on which defendant moved to dismiss on speedy-trial grounds, excluding the period between the *nolle prosequi* and the subsequent reindictment. Therefore the period of delay was presumptively prejudicial as it was substantially in excess of a year. But because the trial court had made conflicting findings and also considered the gap period between the *nolle prosequi* and the reindictment, the Appellate Court remanded for the court to conduct the initial balancing of the factors.

The Appellate Court also "note[d] some principles that may be relevant" on remand. Negligence by the State in bringing a case to trial must be given some weight, but is to be counted against the State more lightly than bad-faith delay. The State cannot be faulted for delays caused by the defendant. The third factor could not weigh against defendant because she asserted her right to a speedy trial in a timely fashion. A more particularized showing of prejudice may be required when the delay is short, while a defendant need not show actual prejudice where the delay is protracted because excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or identify.

The Appellate Court vacated the order of dismissal and remanded for further proceedings.

### [People v. Weddell, 405 Ill.App.3d 424, 939 N.E.2d 504, 2010 WL 4312771 \(2d Dist. 2010\)](#)

1. As a general rule, when the State is granted a *nolle prosequi*, and the defendant is released from custody, bail or recognizance, the statutory speedy-trial term is tolled until such time as identical charges are filed and the defendant is again taken into custody or otherwise held within the court's jurisdiction. A voluntary dismissal by the State may not be used in bad faith to evade the provisions of the speedy-trial statute. Tolling is inoperative upon a clear showing that the State sought the *nolle prosequi* to gain some tactical advantage over the defendant or to otherwise harass or prejudice the defendant so as to frustrate the interests that the speedy-trial right was designed to protect.

[People v. Van Schoyck, 232 Ill.2d 330, 904 N.E.2d 340 \(2009\)](#), did not create an invariable rule that a voluntary dismissal and the subsequent refile of the identical charges do not toll the speedy-trial term. In [Van Schoyck](#), the State used its power of dismissal to avoid the effect of a speedy-trial demand where the term had expired at the time the State sought dismissal. **Van Schoyck** is consistent with the rule that a dismissal will not toll the term where the State intends to evade the statute.

The trial court's determination that the State's motion to *nol-pros* tolled the speedy-trial term because the State did not act in bad faith was not against the manifest weight of the evidence. On day 78 of the speedy-trial term, the State *nol-pros*ed misdemeanor DUI charges and subsequently filed felony charges and the identical misdemeanor charges. Although the felony charges were ultimately dismissed, this did not

demonstrate that the stated purpose of the *nolle prosequi*, to enhance the charges from misdemeanors to felonies, was a pretext to evade the speedy-trial statute, where, unlike **Van Schoyck**, only 78 days had elapsed when the State sought the *nolle prosequi*.

Prior to moving to *nol-pros*, the State asked that the case be passed to check on the availability of its witness. Assuming that the State sought the *nolle prosequi* because it could not find its witness, the speedy-trial term was tolled. The unavailability of a witness is a valid reason to *nol-pros* and tolls the speedy-trial term absent an intent to evade the statute, gain tactical advantage over the defendant, or otherwise frustrate his due process interests.

2. Typically, a motion for substitution of trial judge constitutes a delay occasioned by the defendant. A defendant cannot be forced to choose between his statutory right to substitute a judge and his statutory right to a speedy trial when an exercise of both rights will not cause an unavoidable delay.

The defendant's exercise of his right to substitution of judge caused an avoidable delay and thus tolled the speedy-trial term. On day 159 of the term, defendant moved for substitution of judge to avoid transfer of his case to a new judge who was available to try the case that day, where the judge to whom the case was assigned was engaged in another trial. Defendant could have had his case heard on day 159 by the new judge, but chose to remain with the previously assigned judge, who was unavailable to try the case until after expiration of the term.

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### §47-5

#### **Extending the Statutory Term**

[People v. Brown, 92 Ill.2d 248, 442 N.E.2d 136 \(1982\)](#) The State argued that the trial court erred by denying the State's request for an extension of the speedy trial term to obtain a missing witness. The Court noted that the granting of such a request is discretionary with the trial judge, and found that the trial court did not abuse its discretion where there was an inadequate showing of due diligence and no reason to believe the witness would be produced within a reasonable time. Speedy trial discharge upheld.

[People v. Richards, 81 Ill.2d 454, 410 N.E.2d 833 \(1980\)](#) The court abused its discretion by granting the State's motion for a continuance beyond the 120-day period. The State requested a continuance on October 26, but failed to set that request for a hearing until November 4. At that time it stated the complainant would be out of state for two weeks beginning November 7. The speedy trial period was set to expire on November 19. The Supreme Court held there was insufficient reason to extend the speedy trial term. The complaining witness was available for trial on November 4, 5, or 6, and both sides had declared their readiness for trial. Furthermore, the trial court did not state that it was on trial or preparing to go on trial on another case, and the record fails to show that the trial court sought to have the case transferred to another judge. Finally, had the State scheduled its continuance motion earlier the trial court would have had more flexibility in affording the defendant his right to a speedy trial.

[People v. Battles, 311 Ill.App.3d 991, 724 N.E.2d 997 \(5th Dist. 2000\)](#) Under [725 ILCS 5/103-5\(c\)](#), the trial court may extend the speedy trial period for up to 120 days upon a showing that "the State has exercised without success due diligence to obtain results of DNA testing that is material to the case and . . . there are reasonable grounds to believe that such results may be obtained" at a later date. Whether the State has exercised due diligence is left to the discretion of the trial court, whose finding will be reversed only for a clear abuse of discretion. The prosecution has the burden to establish due diligence, and must "tender a full explanation of each and every step taken to complete DNA testing" within the speedy trial term. Due diligence has been shown where the course of action taken by the prosecution would have been followed by

“a reasonable and prudent person intent upon completing tests within 120 days.” The State must also explain “why the efforts engaged in fell short . . . and resulted in an unavoidable need for delay.” The record failed to support the trial court’s finding that the State demonstrated due diligence. First, the State’s motion stated only that hair, fiber and blood samples had been obtained and DNA testing requested; neither in its motion nor at the hearing did the State explain what steps had been taken to complete the testing within 120 days. Furthermore, the mere assertion of a backlog at the crime lab does not establish due diligence. Because “[s]ome kind of testing backlog will always exist,” the State must explain “what reasonable and prudent effort was made to deal with the backlog and why the backlog hampered the effort to complete the particular testing at issue.”

The Court noted that the sheriff’s department waited 18 days to take the samples to the crime lab - a “task someone could have performed in a matter of minutes” - and the State did not explain what happened in the crime lab after the samples were delivered or what steps were taken to expedite the testing. Under these circumstances, the evidence did not establish “a serious attempt to accomplish testing” within the speedy trial term. Whether the trial court abused its discretion by extending the speedy trial term must be determined based on the evidence before the judge at the time of the extension. Thus, matters which came to light later in the proceedings cannot be considered. The court noted, however, that after the State’s motion was granted, the trial court learned that no testing had been performed during the original speedy trial term, 103 days of which were spent trying to obtain a waiver of crime lab policy prohibiting DNA testing in home invasion cases. Furthermore, the State made no effort to complete the testing - which took only 22 days when it was eventually performed - during the original term. Although in some cases good reasons may exist for a decision to test DNA only after most of the original speedy trial term has expired, “a belated decision to test for DNA evidence must be reasonable in its particulars.” Here, the State crime lab acted unreasonably by “ponder[ing]” for 103 days whether to grant a waiver of its protocol for DNA testing. A prosecutor’s “inability to persuade a State crime lab to break with” its policy does not constitute due diligence.

[People v. Workman, 368 Ill.App.3d 778, 858 N.E.2d 886 \(5th Dist. 2006\)](#) In 2005, the Appellate Court issued an opinion finding that the trial court erroneously granted the State a continuance of the speedy trial term in order to complete DNA testing. The court then granted the State’s petition for rehearing, and issued a new opinion finding that the 60-day continuance was appropriate because a lab technician was pregnant and could not work with certain chemicals. The court stated that “it would be unreasonable for the trial court to demand that a laboratory technician decide between the health of her unborn child and the need for the immediate processing of certain laboratory results.” In a dissenting opinion, Justice Donovan stated that there was no evidence that the delay in DNA testing occurred because the testing posed any health risk to the lab technician or her unborn baby. Instead, the State’s motion for a continuance stated that due to the pregnancy, all DNA work was being transferred to other laboratories. Because the laboratory had taken steps to protect the health of the technician and there is no assertion that the delay was caused by the inability of the technician to perform the testing, “the trial court was not faced with a Hobson’s choice between preserving the defendant’s right to a speedy trial and protecting the health of a laboratory worker and her unborn baby.”

[People v. Shannon, 34 Ill.App.3d 185, 340 N.E.2d 129 \(1st Dist. 1975\)](#) The trial court abused its discretion by granting a 35-day continuance on the final day of the 120-day term to allow the State to locate certain material witnesses. The Court held that the State failed to exercise due diligence when it ascertained the availability of two police officers only four days prior to trial, and learned that the police officers were on vacations that had been scheduled months earlier. The State attempted to locate another witness only six days prior to trial, and the wife of the victim had ascertained 2½ months earlier that the witness had gone to St. Louis. See also, [People v. Flowers, 84 Ill.App.3d 563, 406 N.E.2d 16 \(1st Dist. 1980\)](#) (error to extend term to obtain presence of police officer who was on long-scheduled furlough).

[People v. Durham, 193 Ill.App.3d 545, 550 N.E.2d 259 \(3d Dist. 1990\)](#) The trial court erred by extending

the speedy trial term to allow the State to obtain a laboratory report; the record showed no action or effort by the State to support a finding that due diligence had been exercised to obtain the report. “To hold that the prosecutor in the instant case exercised due diligence, would, in fact, abrogate the requirement of diligence.” The Court also held that the trial judge erred by ignoring the 120-day rule because drug charges were involved. Although “drug usage is an abhorrence in our state and nation, . . . that factor does not justify or dictate a departure from our constitution and mandates providing for a speedy trial.”

[People v. Morgan, 62 Ill.App.3d 279, 378 N.E.2d 1298 \(1st Dist. 1978\)](#) Trial court properly granted the State a 60-day extension to locate a witness. The State exercised due diligence in attempting to find the witness, and there was reason to believe that the witness would be found during the 60-day extension. See also, [People v. Dorsey, 105 Ill.App.3d 895, 435 N.E.2d 499 \(1st Dist. 1982\)](#); [People v. Lindsey, 148 Ill.App.3d 751, 499 N.E.2d 715 \(5th Dist. 1986\)](#).

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[People v. Lacy, 2013 IL 113216 \(No. 113216, 7/11/13\)](#) The speedy-trial statute provides that “[i]f the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.” [725 ILCS 5/103-5\(c\)](#).

The plain language of this statute (“such evidence”) permits the State to seek one 60-day continuance for each item of evidence or witness. It does not permit the State to obtain more than one 60-day continuance to obtain the same item of evidence or witness.

The State’s ability to abuse the 60-day extension is restrained by the requirements that it demonstrate that the evidence is material, that it has exercised due diligence, and that there are reasonable grounds to believe that the evidence will be available at a later date. If the State is aware at the outset that two different witnesses are unavailable, it must disclose their unavailability to the court at the same time and cannot seek separate 60-day extensions for each witness.

This construction of the statute is consistent with the purpose of the speedy-trial statute, which is to implement the constitutional right to a speedy trial. Under a constitutional speedy-trial analysis, the State’s inability to obtain the testimony of a material witness is considered a presumptively valid reason for delay.

The circuit court thus erred in finding that the speedy-trial statute was violated where the State sought one 60-day extension to obtain the presence of a witness who was unavailable due to a medical condition, and another 60-day extension to obtain the presence of a witness who was unavailable due to a military deployment.

[People v. Connors, 2017 IL App \(1st\) 162440 \(No. 1-16-2440, 9/26/17\)](#)

1. Upon application of the State, the trial court may extend the speedy trial term for up to 60 days if the “State has exercised without success due diligence to obtain evidence material to the case and . . . there are reasonable grounds to believe that such evidence may be obtained at a later day. . . .” [725 ILCS 5/103-5\(c\)](#). The State has the burden of proof to demonstrate due diligence, and the trial court’s order granting a continuance is reviewed for abuse of discretion. Due diligence occurs where the prosecution began efforts to locate its witness in sufficient time to secure the witness’s presence before the speedy trial term expired.

2. The trial court erred by granting the State’s motion for a 60-day continuance to obtain the presence of its only witness - the State Trooper who stopped defendant and administered field sobriety tests. The court noted that defendant had announced at several hearings that he was ready for trial, but the prosecution asked for continuances because the trooper had not appeared. Each time, the trial court granted a continuance until the date requested by the State. However, the trooper failed to appear on the new dates as well.

After defendant asked for several continuances to obtain a drug and alcohol evaluation and so a plea bargain might be worked out, plea negotiations failed. Defense counsel then informed the prosecutor and the court that the case should be set for trial. Defense counsel and the trial court again accepted the date requested by the prosecutor. However, on the continued date the trooper again failed to come to court.

On this occasion, the prosecutor stated that he could communicate with the trooper only through a third party and that he had been unable to find a date on which the trooper could appear. The prosecutor requested an extension of the speedy trial term for 60 days. After finding that the State had exercised due diligence, the trial court ordered a 60-day extension of the speedy trial period.

In finding that the trial court abused its discretion, the Appellate Court noted that the first two times defendant was ready for trial, the prosecution offered no explanation for its witness's absence. On the third date, the prosecutor stated only that it was forced to communicate with its witness through a third party and had trouble finding a date the trooper could attend. "Thus, the prosecutor admitted that more than a year after the court first set the case for trial and [defendant] answered ready for trial, after three trial dates set specifically at the prosecutor's request . . . , and knowing that the full 160 days had run on [the] speedy trial term - the prosecutor still had not found out how to contact his one witness. . . ."

The court also noted that trooper was employed as a State Trooper throughout the proceedings, and should not have been difficult for the prosecutor to contact. Under these circumstances, the prosecutor failed to demonstrate that he exercised due diligence to obtain the presence of the witness before the speedy trial term expired.

3. Because the only remedy for a violation of the right to a speedy trial is discharge, the cause was remanded for the trial court to issue a discharge order. The court added:

We implore prosecutors to take drunk driving charges seriously. Once a defendant accused of drunk driving demands trial, the prosecutor must take steps to bring to court all witnesses the prosecution needs to prove its case. . . . We further note that the prosecutor here could have sought . . . a 21-day extension of the speedy trial term, under subsection (f) of the speedy trial statute, and for that extension, the prosecution did not need to show due diligence.

**[People v. Lacy, 2011 IL App \(5th\) 100347 \(No. 5-10-0347, 9/20/11\)](#)**

A defendant who is in custody has a right to be tried within 120 days of the date that he was taken into custody, unless delay was occasioned by the defendant, by an interlocutory appeal, or by certain proceedings specified by statute related to defendant's fitness to stand trial. [725 ILCS 5/103-5\(a\)](#). The court "may continue the cause on application of the State for not more than an additional 60 days" if the court determines that the State has exercised without success due diligence to obtain evidence material to the case and there are reasonable grounds to believe that such evidence may be obtained at a later date. [725 ILCS 5/103-5\(c\)](#).

The plain language of the statute does not allow the State to obtain multiple 60-day continuances of the speedy-trial term. Such a construction would not be consistent with the purpose of the speedy-trial statute, which is to enforce the constitutional right to a speedy trial. If the State is not ready for trial at the end of the extended 180-day period, it can release the defendant from custody on bond or recognizance, thereby further extending the period within which it must bring defendant to trial. The Appellate Court refused to reach the State's argument that construing the statute to limit it to a single 60-day continuance would violate the constitutional principle of separation of powers, as that issue was raised by the State for the first time on appeal.

Because the State requested and received two 60-day continuances of the statutory speedy-trial term due to the unavailability of two different witnesses, the circuit court's order dismissing the first-degree murder charges against defendant was affirmed.

[People v. Pettis, 2017 IL App \(4th\) 151006 \(No. 4-15-1006, 5/31/17\)](#)

Generally, a defendant who is in custody must be tried within 120 days excluding delay attributable to the defense ([725 ILCS 5/103-5\(a\)](#)). In addition, [725 ILCS 5/103-5\(c\)](#) authorizes the State to move for an additional 120 days where it needs additional time to obtain DNA evidence.

The court concluded that where the trial court grants an additional 120 days for DNA testing, the State has a total of 240 days in which to try the defendant. The court rejected the argument that the additional 120-day period begins to run on the day the trial court grants the additional time.

The court observed, however, that where the State files the motion for extension early in the proceedings, it can obtain additional time in which to bring the defendant to trial even though that time is not necessary for DNA testing. Here, by filing the motion for additional time early and convincing the trial court to grant the entire 120-day request, the State was permitted to delay “up to an additional 120 days for the purpose of obtaining testing results it had already received.”

The court found that the trial judge did not abuse her discretion by granting the extension, but stated that a better practice would be to utilize periodic review dates and partial extensions to insure that the speedy trial term is extended only to the extent necessary to allow the State to obtain testing results.

(Defendant was represented by Assistant Defender Mariah Shaver, Springfield.)

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[§47-6](#)

[Delay Attributed to Defendant](#)

[People v. Ladd, 185 Ill.2d 602, 708 N.E.2d 359 \(1999\)](#) Generally, the defense is charged with delay caused by its motions. However, delay is attributed to the defense only where its actions “in fact caused or contributed” to delay. Here, “nothing shows how the defendant’s motions” to dismiss delayed the proceedings past a scheduled hearing that did not occur (apparently because the prosecutor was on vacation), especially where the motions were “simple and uncomplicated and did not require extensive preparation by the State.”

[People v. Mayo, 198 Ill.2d 530, 764 N.E.2d 525 \(2002\)](#) The trial court’s decision that delay is attributed to the defendant is entitled to deference, and will be reversed only for a clear abuse of discretion. For speedy trial purposes, each delay is reviewed individually and attributed to the party which caused it. Delay is occasioned by the defendant when his acts caused or contributed to it. Ordinarily, delay caused by a continuance requested by defense counsel will be attributed to the defendant. Where the defendant clearly and convincingly asserts his right to discharge his attorney and proceed to an immediate trial, however, he is not bound by his attorney’s request for a continuance. In light of defendant’s contradictory statements about whether he wanted an attorney and previous dismissal of counsel and subsequent change of mind, the trial court acted reasonably by refusing to immediately grant a request to proceed *pro se*. Because defendant did not clearly and unequivocally discharge counsel, the trial court did not abuse its discretion by charging the defense with the delay until the next hearing.

[People v. Cordell, 223 Ill.2d 380, 860 N.E.2d 323 \(2006\)](#) [725 ILCS 5/103-5\(a\)](#) provides that a defendant who is in custody has the right to a speedy trial within 120 days of the date he was taken into custody, unless he occasions delay. As amended in 1999, §103-5(a) provides that delay “shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or oral demand for trial on the record.” The court concluded that under the amended statute, “delay” occurs when the trial court sets the trial date more than 120 days after the date on which the defendant was placed in custody. Under the statute, when the trial date is set outside the 120-day window the defendant has the option to

accept or reject the proposed date. To reject the setting, the defendant must make either a written demand for trial or an oral demand for trial on the record. The court rejected the argument that defendant's oral demands for trial, which were made at arraignment and at a status hearing, satisfied §103-5(a) concerning a subsequent trial setting that was outside the 120-day period. The court noted that each of the oral demands was made before any trial date had been proposed. "A simple request for trial, before any 'delay' is proposed, is not equivalent to an objection for purposes of section 103-5(a)." Finally, the court criticized the Appellate Court for relying on precedent decided under the pre-amended version of §103-5(a), under which the defendant's silence was not deemed to be an agreement to the delay. "As amended, §103-5(a) places the onus on a defendant to take affirmative action when he becomes aware that his trial is being delayed."

[People v. Turner, 128 Ill.2d 540, 539 N.E.2d 1196 \(1989\)](#) Defendant contributed to the delay where, *inter alia*, both the defendant and defense counsel expressly agreed to the trial date chosen by the judge. See also, [People v. Wiegand, 183 Ill.App.3d 216, 538 N.E.2d 1374 \(3d Dist. 1989\)](#) (where defendant agreed to the trial date, he could be charged with the delay).

[People v. Jones, 104 Ill.2d 268, 472 N.E.2d 455 \(1984\)](#) Defendants' were not denied a speedy trial where 465 days elapsed between the demand and the trial. The Court found that defendants were responsible for three periods of delay totaling all but 113 days. Delay occasioned by defense motions to dismiss the indictment and suppress evidence, including the calling the motions for hearing and entry of the written order, is ordinarily considered delay occasioned by the defendant. Delay caused by the State's interlocutory appeal is not included within the speedy trial term. Finally, delay caused by the withdrawal of counsel and appointment of new counsel for a co-defendant was properly attributed to the defendants where they neither objected to the delay nor asked for severance.

[People v. Grant, 68 Ill.2d 1, 368 N.E.2d 909 \(1977\)](#) Granting of defendant's motions for severance, and for substitution of judge, tolls the running of the speedy trial statute.

[People v. Donalson, 64 Ill.2d 536, 356 N.E.2d 776 \(1976\)](#) Defendant's motions for a copy of the preliminary hearing minutes and to be examined by a physician did not cause delay where they were decided the same day they were presented. However, a motion to suppress confession filed with 26 days left in the term did constitute a delay by defendant. Given the nature of the allegations, the necessity of a hearing and the need for the State to prepare, the motion eliminated any possibility that the case could be immediately set for trial.

[People v. Crawford Dist. Co., 78 Ill.2d 70, 397 N.E.2d 1362 \(1979\)](#) Whether a discovery motion causes delay is a factual question; thus, great weight is afforded the trial court's finding. Here, "in view of the many motions presented by all of the defendants, and considering the fact that extensive discovery had to be complied with by the State, we will accept the trial court's determination that the defendant was not entitled to a discharge."

[People v. Bowman, 138 Ill.2d 131, 561 N.E.2d 633 \(1990\)](#) Defendant was initially represented by the public defender, who filed a demand for speedy trial. The public defender was later allowed to withdraw because of a conflict and the court appointed an attorney (Kopp) who was under contract to handle conflict cases. Kopp later resigned, and the court appointed the new conflict attorney (Jarrin) 22 days before the day defendant's trial was set. Both Jarrin and Kopp testified that they met with defendant, informed him of his speedy trial rights, and explained the need for a continuance so Jarrin could prepare for trial. They also testified that defendant expressed the desire to continue the case. Five days before the day set for trial, Jarrin had the case generally continued without a certain trial date being set. The defendant testified that he learned that Kopp had resigned and that Jarrin would be replacing him on the date Jarrin obtained the continuance.

He also testified that he first learned of the continuance motion two days after it had been granted, and that on the same day he told Jarrin he did not want a continuance. Defendant also said that neither counsel explained his speedy trial rights or the effect of the continuance on them. Two months later, defendant wrote to the trial judge claiming that he had not wanted a continuance. About one month later a new attorney entered the case and filed a motion to dismiss. The trial judge believed the defendant credible and granted the discharge motion.

The Supreme Court reversed. First, the Court noted the trial judge's finding that the defendant did not ask for or expressly acquiesce in the continuance. Since this finding was based on the credibility of the witnesses, the Supreme Court declined to disturb it. However, the trial judge made no factual determination regarding the defendant's approval or acquiescence in the change of attorneys. The Court concluded that defendant did not object to Jarrin's representation and that delay caused by the change of attorney was attributable to the defense. The Court found that a continuance requested by defense counsel to prepare for trial is properly charged to the defendant, whether or not the record affirmatively shows that defense counsel consulted with and obtained the advice of the defendant before seeking a continuance. A contrary rule "would intolerably burden the trial court" and force the judge to inquire whether the defendant personally agreed to every delay or waived his right to be present. But see, [People v. Roberts, 133 Ill.App.3d 731, 479 N.E.2d 386 \(5th Dist. 1985\)](#) and [People v. Collum, 98 Ill.App.3d 385, 424 N.E.2d 440 \(5th Dist. 1981\)](#) (counsel's motion to withdraw on conflict grounds not delay occasioned by defendant).

[People v. Ingram, 357 Ill.App.3d 228, 828 N.E.2d 763 \(5th Dist. 2005\) P.A. 90-705](#), which amended [725 ILCS 5/103-5\(a\)](#) to provide that for speedy trial purposes, a defendant is deemed to have agreed to delay unless he or she objects by making a written demand for trial or an oral demand for trial on the record, applies to all delay and not only that resulting from the State's motion for a continuance. Where the record failed to show that defendant objected when his trial did not occur on the date for which it was set, and there were no additional proceedings until defendant moved for a speedy trial dismissal, defendant failed to raise a sufficient objection to avoid a finding that he agreed to the delay.

[People v. McClure, 75 Ill.App.3d 566, 394 N.E.2d 833 \(5th Dist. 1979\)](#) Although a motion to substitute judge constitutes a *per se* delay, that delay only temporarily suspended the running of the 160-day period. Thus, the defendant could not be held accountable for the entire two-month delay between the granting of the motion for substitution and the petition for discharge; the State, which took no action to bring the defendant to trial, caused the brunt of the delay.

[People v. Childress, 321 Ill.App.3d 13, 746 N.E.2d 783 \(1st Dist. 2001\)](#) A reviewing court need not accept the State's admission that it should be charged with a delay. Despite the State's concession that it was responsible for 124 days of delay, the Court found that the State could not be charged with 12 days and affirmed the trial court's denial of a motion for discharge.

[People v. Majors, 308 Ill.App.3d 1021, 721 N.E.2d 753 \(4th Dist. 1999\)](#) Before granting a continuance requested by the defense, the trial court questioned the parties about the effect on the speedy trial term. After counsel agreed that the term would be tolled until a new trial date was set and defendant expressed his agreement, the continuance was granted. At the next status hearing, defense counsel stated that 91 days of the speedy trial period had elapsed and that defendant wanted a trial within the next 29 days. The trial judge set a trial within 29 days, but the State sought a continuance because a witness was unavailable. The Court rejected the argument that once he demanded trial, defendant was entitled to have a trial within the remaining 29 days of the speedy trial term. A defendant cannot "make an open-ended motion for a continuance, requesting only that the matter be scheduled for a status hearing, and then unilaterally halt the tolling of the speedy trial clock" by demanding that a trial be held within the remaining speedy trial term. If such a right existed, a defendant with two days on the speedy trial term "could move for an open-ended continuance. .

. and then at any subsequent time simply change his mind and insist on being tried on two days' notice." The court concluded that defendant knowingly waived his right to a speedy trial when he moved for a continuance. In addition, because the defense did not request a continuance to a certain date, all time between the motion for continuance and the next trial setting was attributable to the defense.

[People v. Cabrera, 188 Ill.App.3d 369, 544 N.E.2d 439 \(3d Dist. 1989\)](#) A defendant is responsible for the time naturally associated with processing his pretrial motions. The trial judge's decision as to accountability for delay will be sustained in the absence of a clear abuse of discretion. Here, defendant's motion for psychiatric evaluation, and the uncertainty of the timing and outcome of the evaluation, made the setting of a trial date impossible. Thus when the trial judge named three possible trial dates and defense counsel said that two of the dates were fine, and the judge set trial for one of those dates, the defendant acquiesced in the delay.

[People v. Underwood, 108 Ill.App.3d 846, 439 N.E.2d 1080 \(1st Dist. 1982\)](#) The defendant contended that he was denied a speedy trial because more than 16 years passed between his arrest and trial. There were 64 continuances - 31 on defendant's motions, 31 by agreement, and two on the State's motion. The Court held that "[b]ecause the large majority of continuances were either requested or agreed to by defendant, we do not believe he was denied his right to a speedy trial."

[People v. Scotti, 131 Ill.App.3d 571, 475 N.E.2d 1097 \(2d Dist. 1985\)](#) Defense counsel's failure to appear in court at the appointed time was delay attributable to defendant. When a continuance is necessitated by absence of counsel, such continuance is attributable to defendant even if it was granted on the court's own motion.

[People v. Andrade, 279 Ill.App.3d 292, 664 N.E.2d 256 \(1st Dist. 1996\)](#) Noting a conflict in Illinois authority, the Court held that delay required to allow the State to respond to a motion for discharge is not automatically attributed to either the State or the defense. Instead, the court must assign responsibility for the delay based on the facts and circumstances of each case, including the timeliness and complexity of the discharge motion, whether the facts underlying the motion are readily ascertainable, and the length of the delay. Where the continuance was only for one day and resolution of the motion required the State to investigate which side had caused other delays, the trial court did not err by attributing the delay to the defendant.

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Cumulative Digest Case Summaries §47-6

[People v. Brexton, 2012 IL App \(2d\) 110606 \(No. 2-11-0606, 12/28/12\)](#)

By statute, a defendant who is in custody must be tried within 120 days from the date that he was taken into custody. No demand for trial is necessary to start the running of the statutory term. But once the term starts, a "[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." [725 ILCS 5/103-5\(a\)](#).

"Delay" as used in the statute means any action by either party or the trial court that moves the trial date outside of the 120-day period. When a trial court sets the trial date outside of the 120-day period, defendant must object to stop the speedy-trial clock from tolling. A defendant may not agree or acquiesce to a trial date outside of the term and then complain that the trial court should have given him a speedy trial. This rule applies whether or not defendant realizes at the time that the trial date is set outside of the term.

After the defendant was restored to fitness, the trial court proposed a trial date that was outside of the speedy-trial term. Defense counsel responded that the date was "fine." Defense counsel also noted that defendant had demanded a speedy trial. At a post-trial hearing, defense counsel testified that when the trial

date was set, he had not yet calculated the speedy-trial term and assumed that the date set by the court was within the term period.

Regardless of whether counsel realized that the trial date was set outside of the speedy-trial term, counsel acquiesced to a trial date outside of the term and did not object to the delay. The continuance is considered to be with the agreement of the defendant and the trial court did not err in denying defendant's motion to dismiss on speedy-trial grounds.

(Defendant was represented by Assistant Defender Barbara Paschen, Elgin.)

**[People v. Dennis, 2011 IL App \(5th\) 090346 \(No. 5-09-0346, 8/31/11\)](#)**

The trial court did not abuse its discretion when it attributed to the defense delay caused by defendant's motion for an automatic substitution of judge. The trial judge was not assigned until four days before trial, and the defendant promptly filed a motion for substitution. A new judge was assigned, and the trial was held just two weeks later. The court concluded that because there was no evidence that an earlier date was available on the new judge's calendar, the entire 14-day delay was properly charged to the defendant.

The court rejected the argument that a defendant should not be required to choose between two statutory rights - the right to a speedy trial and the right to substitute judges:

[A]nytime a defendant files a motion which delays his trial he makes just such a choice. It is, in the end, the defendant's choice, and in the case at bar, the defendant chose to exercise his right to substitute judges at the expense of his right to be tried within 120 days of his arrest.

The court also noted that the result would have been different had the record showed that an earlier trial date was available and that defendant's exercise of two constitutional rights would not have caused an unavoidable delay.

(Defendant was represented by Panel Attorney Pamela Lacey, Benton.)

**[People v. Galloway, 2014 IL App \(1st\) 123004 \(No. 1-12-3004, 9/30/14\)](#)**

Under the speedy trial statute, a defendant on bail or recognizance shall be tried within 160 days of the date he or she demands trial. But the defendant's failure to appear "for any court date set by the court" waives the defendant's speedy trial demand. [725 ILCS 5/103-5\(b\)](#). When a defendant fails to appear, the previous demand for trial is waived and a new speedy trial period begins when defendant files a new demand.

Here the trial court set a court date for 9 a.m. on September 20, 2011. When the case was first called on that date, defendant did not appear. The court passed the case but defendant was still not present when it was called again at 10:50 am. The court passed the court a second time, but defendant was still not present when it was called a third time. At that point, the court issued a bond forfeiture warrant. When the case was called a fourth time in the afternoon, defendant was present.

Defendant argued on appeal that she did not waive her initial speedy trial demand by failing to appear on the set court date because, while she failed to appear on the first three calls in the morning of that date, she did appear in the afternoon. Defendant characterized her failure to appear in the morning as "mere lateness" rather than a failure to appear as contemplated by the speedy trial statute. Defendant argued that the term "court date set by the court" should be interpreted broadly to include any appearance during business hours of the scheduled date.

The Appellate Court disagreed with defendant's broad interpretation of what constitutes the set court date. Such an interpretation would defeat the purpose of setting a precise date and time, which the trial court did here, and would permit a defendant to evade trial and avoid waiving a speedy trial demand. The terms of the statute "any court date set by the court" encompass both the date and the time set by the court. Since defendant did not appear at the time set by the court, her previous speedy trial demand was waived and there was no speedy trial violation.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

**People v. Higgenbotham, 2012 IL App (1st) 110434 (No. 1-11-0434, 6/28/12)**

1. The speedy-trial statute provides that every person on bail or recognizance shall be tried within 160 days of the date that the defendant demands trial unless the delay is occasioned by defendant. [725 ILCS 5/103-5\(b\)](#). Delay occasioned by defendant temporarily suspends the speedy-trial term for the time of the delay. On the expiration of the delay, the term continues at the point at which it was suspended. [725 ILCS 5/103-5\(f\)](#). The defendant's failure to appear for any court date set by the court operates as a waiver of defendant's demand for trial. [725 ILCS 5/103-5\(b\)](#).

2. Delay occasioned by defendant includes a continuance allowed pursuant to [725 ILCS 5/114-4](#) upon a trial court's determination of the defendant's physical incapacity for trial. [725 ILCS 5/103-5\(b\)](#). [725 ILCS 5/114-4](#) provides that a continuance allowed due to the physical incapacity of defendant "shall suspend" the provisions of §103-5, "which period of time limitation shall commence anew" when the court determines that the physical incapacity no longer exists. [725 ILCS 5/114-4\(i\)](#). Use of the word "suspend" in §114-4(i) suggests a mere interruption of defendant's speedy-trial demand when defendant becomes physically incapacitated. But inclusion of the phrase "commence anew" suggests that the demand ends.

The intent of the legislature is more clearly revealed by referring back to the speedy-trial statute, which also uses the word "suspend" in subsection (f) and makes clear that "suspend" means a delay occasioned by defendant that merely tolls the speedy-trial term. Under the doctrine of *in pari materia*, two statutes must be considered with reference to each other to allow for a harmonious interpretation of the relevant provisions, and words and phrases should be construed with reference to the other relevant provisions and not in isolation. The only logical interpretation of these two statutes is that the term tolls when defendant obtains a continuance due to physical incapacity, and then continues from the date at which it was stopped when the physical incapacity is removed.

3. Defendant's speedy-trial term was merely tolled and did not end when her attorney appeared in court and requested a continuance due to defendant's hospitalization, supported by a note written by defendant's physician. This was not a failure to appear under subsection (b), but an absence and the grant of a motion for continuance due to physical incapacity under subsection (f) and §114-4(i).

4. On two subsequent dates, defendant failed to appear in court and her attorney informed the court that she had been unable to reach the defendant since her hospitalization. When defendant did appear after the two missed court dates, she supplied a doctor's note explaining that she had been hospitalized. Even though the trial court credited the doctor's note and found that her absence on those court dates was not willful, defendant's failure to appear terminated, and did not toll, the speedy-trial term.

When a defendant fails to appear in court for any reason, the defendant waives a demand for a speedy trial, regardless of whether an explanation for that absence is provided at a subsequent court date. A defendant cannot transform a failure to appear under subsection (b) into a delay occasioned by defendant under subsection (f), and avoid the effects of waiver, simply by providing an explanation for the absence at a subsequent court date. To avoid the effect of waiver, defendant must communicate with counsel prior to the court date, as defendant did on her first missed court date. The court may then grant a continuance upon receipt of evidence of defendant's incapacity.

The Appellate Court reversed the order granting defendant's motion to dismiss on speedy-trial grounds.

**People v. Jones, 2018 IL App (1st) 151307 (3/22/18)**

In 1999, the speedy trial statute, [725 ILCS 5/103-5](#), was amended to require a written or oral demand for trial in order to avoid having delay attributed to defendant. While no "magic words" are required, there must be some affirmative statement requesting a speedy trial. Here, defense counsel did not object when the court asked for counsel's position on the State's request for a continuance due to witness unavailability, nor did counsel object to the delay during the ensuing discussion concerning rescheduling. Accordingly, the 36-day delay in question was attributable to defendant and there was no statutory speedy trial violation.

The Appellate Court also found the Illinois Sex Offender Registration Act and the Illinois Sex

Offender Community Notification Law (SORNA) were not unconstitutional as applied to defendant under the Eighth Amendment or the proportionate penalties clause. Following Supreme Court precedent holding that SORNA is not punitive, the Appellate Court rejected the Third District's recent decision in **People v. Tetter**, 2018 IL App (3d) 150243, which held to the contrary. The Court was also critical of **Tetter**'s ultimate outcome because it completely relieved that defendant of any and all restrictions under SORNA rather than continuing to apply the portions of SORNA that previously had been upheld by the Supreme Court.

An Eighth Amendment and proportionate penalties challenge to the predatory-sexual-assault statutory scheme was also rejected. While the 17-year-old defendant's conduct would have been a Class A misdemeanor rather than a Class X felony had it been committed either two months earlier (before he turned 17) or two months later (after the victim turned 13), the legislature must draw the line somewhere and there will always be individuals close to the line. Defendant's reliance on **People v. Miller**, 202 Ill. 2d 328 (2002), and **People v. Gipson**, 2015 IL App (1st) 122451, was rejected because those defendants were each only 15 years old, they had received mandatory sentences of life or near life, and there were mental health issues at play in **Gipson**, as well. Defendant's 10-year sentence was close to the 6-year minimum and was not an abuse of discretion.

(Defendant was represented by Assistant Defender Meredith Baron, Chicago.)

#### [People v. Larue, 2014 IL App \(4th\) 120595 \(No. 4-12-0595, 5/14/14\)](#)

Under the speedy trial statute, a defendant in custody must be brought to trial within 120 days of the day he was placed in custody. [725 ILCS 5/103-5\(a\)](#). The speedy-trial period is tolled during any period of delay caused by defendant. But where the State brings new and additional charges that are subject to compulsory joinder with the original charges, delay caused by defendant on the initial charges will not be attributed to defendant on the new charges. The compulsory joinder statute requires the State to prosecute in a single case all known offenses that are based on the same act. [720 ILCS 5/3-3\(b\)](#).

The speedy-trial rule regarding new charges, however, does not apply to included offenses. An indictment for an offense serves as an indictment for all included offenses, and thus all included offenses are deemed to be before the court when any continuances are granted.

Here, the State initially charged defendant with aggravated unlawful use of a weapon (AUUW), and then after defendant had been in custody for over 120 days, added the charge of unlawful possession of a weapon by a felon (UPWF). Although UPWF would normally be considered a lesser included offense of AUUW since both charges are premised on possessing a firearm while having a previous felony conviction, defendant argued that because UPWF carries a greater maximum penalty than AUUW, it is not a lesser-included offense. (AUUW is a Class 2 felony with a sentencing range of three to seven years imprisonment; UPWF is a Class 3 felony with a range of two to 10 years imprisonment.)

The court rejected this argument, holding that despite the greater maximum sentence for UPWF, it was still a lesser-included offense of AUUW. All of the elements of UPWF were contained within AUUW and thus defendant was on notice that UPWF was a possible charge when he requested continuances. Hence there was no speedy-trial violation when the State added the UPWF charge.

(Defendant was represented by Assistant Defender Marty Ryan, Springfield.)

#### [People v. Minor, 2011 IL App \(1st\) 101097 \(No. 1-10-1097, 12/9/11\)](#)

The speedy-trial statute provides that every person on bail or recognizance shall be tried within 160 days of the date that the defendant demands trial unless the delay is occasioned by defendant. [725 ILCS 5/103-5\(b\)](#). The statute also provides that delay occasioned by defendant temporarily suspends the speedy-trial term for the time of the delay, and that on the expiration of the delay, the term continues at the point at which it was suspended. [725 ILCS 5/103-5\(f\)](#). After adoption of subsection (f), subsection (b) was amended to provide that the "defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial."

Prior to amendment of subsection (b), delay occasioned by defendant's failure to appear in court merely suspended the speedy-trial term. The plain language of the amendment manifested the legislature's intent to distinguish a defendant's failure to appear from other types of delay. A defendant who fails to appear voluntarily relinquishes his right to trial within 160 days of his demand for trial. Treating a failure to appear as comparable to a request for continuance or other delay would entitle a fugitive to the benefit of an earlier speedy-trial demand when apprehended and brought before the court. [People v. Zakarauskas, 398 Ill.App.3d 451, 924 N.E.2d 578 \(1st Dist. 2010\)](#).

Defendant, who had previously demanded trial, failed to appear on her court date, subsequently explaining that she had mixed up the court dates. Her failure to appear operated to waive her speedy trial term, rather than suspend it. An explained failure to appear was not distinguishable from an unexplained failure to appear because no such distinction exists in the language of the statute. A court cannot read into the statute a condition, exception or limitation not expressed by the legislature.

The court reversed the order granting defendant's motion for speedy-trial discharge.

#### [People v. Thomas, 2014 IL App \(2d\) 130660 \(No. 2-13-0660, 5/29/14\)](#)

The State charged defendant with misdemeanor DUI (based on impairment) by means of a verified complaint filed by the police. Over 160 days after defendant filed a demand for speedy trial, the prosecutor's office filed an information charging defendant with DUI (based on blood alcohol levels).

1. The second DUI charge was properly dismissed on speedy trial grounds. Under [725 ILCS 5/103-5\(b\)](#), the State must try a defendant within 160 days of the date defendant demands trial unless delay is caused by defendant. When the State files additional charges that arose from the same facts as the original charges, any delay caused by defendant will not be applied to the new charges in determining whether there has been a speedy trial violation. This rule only applies to charges that are subject to compulsory joinder, which requires the prosecution to join all known charges arising from the same act. [720 ILCS 5/3-3](#).

Here the State added the new charge of DUI after 160 days had passed, and since that charge was subject to compulsory joinder, none of the delay caused by defendant could be considered against the second DUI charge, and thus it was barred by the speedy trial statute.

2. The second DUI charge was subject to compulsory joinder even though the first charge was filed by the police in a verified complaint. In [People v. Jackson, 118 Ill. 2d 179 \(1987\)](#), the Illinois Supreme Court held that compulsory joinder did not apply where the initial charges were traffic offenses filed in a complaint by the police and the new charges were felonies filed by the prosecutor in an information or indictment.

**Jackson** did not apply to this case because here both the initial DUI and the new DUI charges were misdemeanors that could have been filed by the police through verified complaints. A felony, by contrast, can only be filed through an indictment or information. Since the vast majority of traffic and misdemeanor cases are charged by the police, expanding **Jackson** to the current situation would mean that compulsory joinder would almost never apply to misdemeanors, an outcome that would be "absurd and ill-advised."

#### [People v. Thompson, 2012 IL App \(2d\) 110396 \(No. 2-11-0396, 11/13/12\)](#)

1. Where a defendant is simultaneously in custody for more than one charge, the State is required to bring the defendant to trial on one of those charges within 120 days of arrest and must try the defendant on the remaining charge within 160 days from the rendering of judgment on the first charge. [725 ILCS 5/103-5\(e\)](#). The State has the right to change its election. The speedy-trial clock is tolled in the unelected matter when the State initially elects to bring a defendant to trial first on unrelated charges, and the speedy trial clock is also tolled if the State changes its original election, absent subterfuge.

Defendant was in custody on unrelated misdemeanor and felony charges. The State elected on the felony charge, and later changed its election to the misdemeanor charges. Defendant was tried on the misdemeanor charges within 120 days of the date that the State changed its election, and therefore there was no speedy-trial violation. The Appellate Court rejected defendant's argument that when the State changed

its election, the speedy-trial clock on the misdemeanor charges related back to the date that the defendant was taken into custody on those charges.

2. The Appellate Court further concluded that regardless of the change of the election, defendant's speedy-trial rights were not violated. "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date [the defendant] was taken into custody unless delay is occasioned by the defendant . . . . Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." [725 ILCS 5/103-5\(a\)](#).

Defendant agreed to the delay of his trial within the meaning of §103-5(a) from the date that he was taken into custody on the misdemeanor charges until the date that the State changed its election. Under §103-5(a), a defendant is considered to have agreed to a delay unless he objects to the delay by making a written demand for trial or an oral demand for trial on the record. Defendant did neither and therefore he agreed to the delay. Merely answering ready for trial and objecting to a continuance is not a sufficient demand under the statute.

(Defendant was represented by Panel Attorney John Young.)

[People v. Wade, 2013 IL App \(1st\) 112547 \(No. 1-11-2547, 3/20/13\)](#)

[725 ILCS 5/103-5\(a\)](#) provides that a person in custody must be tried within 120 days of being taken into custody, unless he occasioned the delay. A defendant agrees to delay unless he or she objects to delay by making a written or oral demand for trial. Such a demand must be made when the prospect of delay arises. A demand for trial made before the case is delayed does not satisfy the requirements of §103-5(a).

The court rejected the argument that a demand for trial is not required if a case is set for trial and the continued date is within the 120-day speedy trial period. The court found that for speedy trial purposes, there is no distinction between agreeing to a trial date and agreeing to a continuance. In either case, the speedy trial term is tolled.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

[People v. Weddell, 405 Ill.App.3d 424, 939 N.E.2d 504, 2010 WL 4312771 \(2d Dist. 2010\)](#)

1. As a general rule, when the State is granted a *nolle prosequi*, and the defendant is released from custody, bail or recognizance, the statutory speedy-trial term is tolled until such time as identical charges are filed and the defendant is again taken into custody or otherwise held within the court's jurisdiction. A voluntary dismissal by the State may not be used in bad faith to evade the provisions of the speedy-trial statute. Tolling is inoperative upon a clear showing that the State sought the *nolle prosequi* to gain some tactical advantage over the defendant or to otherwise harass or prejudice the defendant so as to frustrate the interests that the speedy-trial right was designed to protect.

[People v. Van Schoyck, 232 Ill.2d 330, 904 N.E.2d 340 \(2009\)](#), did not create an invariable rule that a voluntary dismissal and the subsequent refile of the identical charges do not toll the speedy-trial term. In [Van Schoyck](#), the State used its power of dismissal to avoid the effect of a speedy-trial demand where the term had expired at the time the State sought dismissal. **Van Schoyck** is consistent with the rule that a dismissal will not toll the term where the State intends to evade the statute.

The trial court's determination that the State's motion to *nol-pros* tolled the speedy-trial term because the State did not act in bad faith was not against the manifest weight of the evidence. On day 78 of the speedy-trial term, the State *nol-pros*ed misdemeanor DUI charges and subsequently filed felony charges and the identical misdemeanor charges. Although the felony charges were ultimately dismissed, this did not demonstrate that the stated purpose of the *nolle prosequi*, to enhance the charges from misdemeanors to felonies, was a pretext to evade the speedy-trial statute, where, unlike **Van Schoyck**, only 78 days had elapsed when the State sought the *nolle prosequi*.

Prior to moving to *nol-pros*, the State asked that the case be passed to check on the availability of its witness. Assuming that the State sought the *nolle prosequi* because it could not find its witness, the

speedy-trial term was tolled. The unavailability of a witness is a valid reason to *nol-pros* and tolls the speedy-trial term absent an intent to evade the statute, gain tactical advantage over the defendant, or otherwise frustrate his due process interests.

2. Typically, a motion for substitution of trial judge constitutes a delay occasioned by the defendant. A defendant cannot be forced to choose between his statutory right to substitute a judge and his statutory right to a speedy trial when an exercise of both rights will not cause an unavoidable delay.

The defendant's exercise of his right to substitution of judge caused an avoidable delay and thus tolled the speedy-trial term. On day 159 of the term, defendant moved for substitution of judge to avoid transfer of his case to a new judge who was available to try the case that day, where the judge to whom the case was assigned was engaged in another trial. Defendant could have had his case heard on day 159 by the new judge, but chose to remain with the previously assigned judge, who was unavailable to try the case until after expiration of the term.

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§47-7

### **Delay Not Attributable to Defendant**

[People v. Ladd, 185 Ill.2d 602, 708 N.E.2d 359 \(1999\)](#) Generally, the defense is charged with delay caused by its motions. However, delay is attributed to the defense only where its actions “in fact caused or contributed” to delay. Here, “nothing shows how the defendant’s motions” to dismiss delayed the proceedings past a scheduled hearing that did not occur (apparently because the prosecutor was on vacation), especially where the motions were “simple and uncomplicated and did not require extensive preparation by the State.”

[People v. Nunnery, 54 Ill.2d 372, 297 N.E.2d 129 \(1973\)](#) Defendant did not cause delay by filing discovery motion on the 115th day. The State did not explain why arraignment and appointment of counsel had been delayed for 115 days. In addition, had the State been ready for trial (as it claimed), its response to the discovery motion could have been prompt. Finally, the State erroneously advised the trial court that the term would not run for six more weeks.

[People v. Beyah, 67 Ill.2d 423, 367 N.E.2d 1334 \(1977\)](#) The Court ruled delay was not attributable to defendant where the trial judge continued the cause to a future date because he, the prosecutor and defense counsel were all engaged in the trial of another case. “To conclude under these circumstances and after [defense] counsel was ordered to ‘pick a date,’ that the delay was occasioned by defendant would be a mockery of justice.” See also, [People v. Healey, 293 Ill.App.3d 684, 688 N.E.2d 786 \(1st Dist. 1997\)](#) (defense counsel did not cause delay by acquiescing to new date chosen by judge.) Also, defendant did not waive his right to a speedy trial by failing to object to the trial court’s order attributing the delay to the defense.

[People v. Shields, 58 Ill.2d 202, 317 N.E.2d 529 \(1974\)](#) Trial court erroneously charged to the defendant a continuance ordered on the court’s own motion. The only delay which could have been attributed to defendant was his request to be given seven days to answer the State’s notice-of-alibi request, which would have been unnecessary but for the State’s request. “Thus, the source of delay appears to rest rather heavily upon the State.”

[People v. Vasquez, 311 Ill.App.3d 291, 724 N.E.2d 984 \(2d Dist. 2000\)](#) Where the State failed to comply with a final date by which it was to complete discovery, and defense counsel responded by suggesting that the case be taken “off the call” and that he would bring the case back to the court if the State’s discovery was not completed soon, the trial judge erred by finding that defense counsel agreed to a continuance. The court

noted that the previously set dates for the final pretrial hearing and trial were not changed, and found that counsel was merely withdrawing his motion to compel discovery in response to the State's agreement to complete discovery within a few days.

**People v. Healy, 293 Ill.2d 684, 688 N.E.2d 786 (1997)** (1st Dist. 1997) Under 725 ILCS 5/103-5, the defendant must be tried within 120 days from the date he was taken into custody, unless delay is attributable to the defense. Delay is attributed to the defense where an affirmative act by the defendant "causes or contributes to the delay," or where the defense expressly agrees to a continuance. The defendant's mere silence or failure to object when the prosecution requests a continuance does not mean the delay is attributable to the defense. Furthermore, mere acquiescence to a date suggested by the trial court is not delay by the defense. Here, the trial court erred by attributing delay to the defense. Repeated continuances were ordered for one reason - to allow the prosecution to obtain laboratory analysis of its evidence. The prosecution never claimed to be ready for trial before the lab report was received, and the defense did nothing to delay the testing process. Nor could defense counsel's statements be interpreted as acquiescence in the delays. Counsel's comments were not express agreements to continuances, but merely acceptance of the trial court's decision to grant a continuance to the prosecution. In addition, defense counsel's suggestion of a hearing date after he was asked to do so by the judge was not an agreement to the continuance, which the trial court had already decided to grant to the State. Finally, docket entries indicating that the continuances were by agreement were not controlling in the absence of any indication that defense counsel had seen the entries. The defendant "has no obligation to examine or correct the half-sheet and no obligation to inform the trial court or the prosecution of the expiring term."

**People v. Wynn, et. al., 296 Ill.App.3d 1020, 695 N.E.2d 903 (4th Dist. 1998)** Seven weeks before scheduled pretrial hearings, the judge notified the prosecutor and defense counsel that he would be unavailable on the scheduled date. The court stated that the pretrial hearing "can be continued to the trial date for each case." The prosecutor was present on the date scheduled for each pretrial hearing; however, neither the judge nor defense counsel appeared. The State argued that because defense counsel failed to appear and the practice in the county was to hold "pretrials" whether or not a judge was present, defense counsel's absence constituted delay attributable to the defendant. The Appellate Court rejected this argument. A criminal defendant does not cause delay by failing to appear at a "proceeding" at which the trial judge does not appear. Regardless of the country's practice concerning pretrial hearings, a proceeding at which the judge fails to appear is not a "judicial hearing" and cannot be the cause of delay for speedy trial purposes. The court also rejected the argument that if the judge's notice was construed as an order continuing the cases, defense counsel "concurred in the continuance" by failing to object or renew a speedy trial motion. Under Illinois law, a defendant may be held responsible for delay to which defense counsel expressly agrees. Delay is not attributable to the defense, however, where counsel merely acquiesces in the trial court's decision to grant a continuance. The court concluded that where defense counsel failed to appear after receiving the trial court's notice that it would not be present for the next hearing, counsel's conduct "amounted to nothing more than acquiescence. . ."

**People v. Schmidt, 233 Ill.App.3d 512, 599 N.E.2d 201 (3d Dist. 1992)** Defendant did not waive his speedy trial rights when he failed to object to the order setting the trial date 75 days in advance; it is the duty of the State to commence the trial within the statutorily authorized term, and a defendant has no duty to advise the court that the date set for trial presents a speedy trial problem. In addition, the mere fact that the defense fails to object to an order setting a trial date beyond the term does not, standing alone, constitute acquiescence in the delay.

**People v. Townsel, 32 Ill.App.3d 932, 337 N.E.2d 408 (1st Dist. 1975)** The court erred where it denied defendant's motion for discharge after making a retroactive change in the record after the term had run. After

the motion for discharge was filed, the trial judge in effect changed a prior continuance to reflect a motion by defendant rather than on the order of the court.

[People v. Carrillo, 27 Ill.App.3d 603, 327 N.E.2d 1 \(1st Dist. 1975\)](#) Defendant was not brought to trial within 120 days, and the sole question was whether a continuance was properly charged to the defense. The Court held that the continuance could not be charged to defendant even if his counsel, the public defender, stated that it was “Motion defendant.” Since defendant did not speak English and no interpreter was present, counsel had been unable to consult with him. Under these circumstances the public defender could not speak for the defendant.

[People v. Wiegand, 183 Ill.App.3d 216, 538 N.E.2d 1374 \(3d Dist. 1989\)](#) The responsibility for delays caused by crowded dockets rests with the State, not the defendant.

[People v. McClure, 75 Ill.App.3d 566, 394 N.E.2d 833 \(5th Dist. 1979\)](#) The defendant filed a demand for a speedy trial. A preliminary hearing was held 148 days after his demand. Six days after the preliminary hearing the defendant filed a discovery motion and a motion for substitution of judge. On the 217th day after the demand for trial, defendant filed a motion for discharge which the trial judge granted. The Appellate Court agreed that the defendant’s discovery motion caused no delay - the motion was timely filed and the State failed to object, comply with the motion, or indicate that additional time was needed.

[People v. Roberts, 133 Ill.App.3d 731, 479 N.E.2d 386 \(5th Dist. 1985\)](#) The trial judge erred in denying defendant’s speedy trial discharge motion. The defendant could not be charged with delay resulting from the State’s interlocutory appeal in a co-defendant’s case. “[T]he right to a speedy trial is a right personal to the accused . . . [and] may not be waived because of delays occasioned by a co-defendant for which the accused was not in any way responsible.” Furthermore, defendant was not responsible for an 11-day delay caused by defense counsel’s withdrawal from the case; “where . . . counsel withdraws on his own initiative, any resulting delay cannot be charged to defendant.” See also, [People v. Collum, 98 Ill.App.3d 385, 424 N.E.2d 440 \(5th Dist. 1981\)](#) (public defender’s motion to withdraw on conflict grounds not delay occasioned by defendant).

[People v. Jump, 127 Ill.App.3d 440, 468 N.E.2d 1278 \(3d Dist. 1984\)](#) The defendant’s motion to suppress caused no delay where it was disposed of on the same day it was heard, without any continuance. The fact that the case was removed from a certain month’s calendar was not delay caused by defendant; the “record does not establish that this removal was in response to defendant’s motion . . . [and] delay cannot be attributed to the defendant where the record is silent.” Finally, the motion of the public defender to withdraw did not cause delay where the trial date was set before the motion was filed.

[People v. McKinney, 59 Ill.App.3d 536, 375 N.E.2d 854 \(5th Dist. 1978\)](#) Defense counsel’s motion to withdraw did not constitute delay where new counsel was immediately appointed.

[People v. Williams, 94 Ill.App.3d 241, 418 N.E.2d 840 \(1st Dist. 1981\)](#) The defendants were charged with two offenses, and on the 120th day of the speedy trial term were charged with additional offenses arising out of the same incident. The Appellate Court held that defendants were denied their rights to a speedy trial on the additional offenses. “Only the State’s tardiness (for which the State has never offered an explanation) in filing the new and additional charges precluded commencement of prosecution on these charges within the speedy trial term. To charge defendants with a tolling to the term under these circumstances, especially where the need for time to effectuate discovery was essential, would circumvent the very protection the statute aimed to provide.” See also, [People v. Stanley, 266 Ill.App.3d 307, 641 N.E.2d 1224 \(3d Dist. 1994\)](#).

[People v. Hinkle, 234 Ill.App.3d 663, 600 N.E.2d 535 \(5th Dist. 1992\)](#) Where a new charge arises from the same facts as the original charge and was known to the State when the original charge was filed, the same speedy trial rules apply to both charges. Furthermore, delay which defendant caused on the original charge cannot be attributed to a charge which had not even been filed when the delay occurred. The Court also found it irrelevant that the charges were not statutorily required to be joined in one prosecution; what matters is that the State failed to file all the charges in a timely manner though it knew all the charges arose from the same facts.

[People v. Moore, 99 Ill.App.3d 664, 425 N.E.2d 1134 \(1st Dist. 1981\)](#) The defendant's motions for discovery and continuance did not toll the running of the speedy trial term. The motions were made after the 160-day period had already expired; thus, "they did not contribute to delays within that period."

[People v. Bryant, 223 Ill.App.3d 971, 585 N.E.2d 1233 \(4th Dist. 1992\)](#) Where the defendant failed to appear for trial while on bond, the 120-day "in-custody" speedy trial term began to run on the date he was subsequently arrested and placed in custody, and not on the first available trial date after his failure to appear. Where the defendant was arrested on November 28, 1990 for his failure to appear, the 120-day speedy trial term began to run on that date.

[People v. Hawkins, 212 Ill.App.3d 973, 571 N.E.2d 1049 \(1st Dist. 1991\)](#) The Court held that three continuances should not be charged to the defense and that defense counsel was ineffective for failing to file a discharge motion on speedy trial grounds. On each of the dates in question, the defense appeared for trial, but the trial judge was involved in other cases. On the first occasion the trial court denied counsel's request for an earlier trial date, and on the other two occasions the judge stated that no earlier date was available. Although the prosecutor stated that the last continuance was by agreed order, neither the trial judge nor defense counsel acknowledged that statement.

[People v. Roberson, 289 Ill.App.3d 344, 681 N.E.2d 1069 \(4th Dist. 1997\)](#) The trial court erred by assigning delay due to the prosecutor's illness to "neither" party; "[t]o say the delay is not attributable to the State has the effect of charging [it] to the defendant."

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**Cumulative Digest Case Summaries §47-7**

[People v. Bauman, 2012 IL App \(2d\) 110544 \(No. 2-11-0544, 12/12/12\)](#)

1. The Illinois speedy-trial statute implements the constitutional right to a speedy trial and must be liberally construed in favor of defendant to avoid infringement of defendant's constitutional speedy-trial right. When the determination of whether defendant's speedy-trial right was violated depends on an interpretation of the statute, review is *de novo*.

2. "Every person on bail or recognizance shall be tried . . . within 160 days from the date defendant demands trial unless delay is occasioned by the defendant . . . . The defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial made under this subsection." [725 ILCS 5/103-5\(b\)](#).

Defendant did not appear in court on a status date set by the State for a return of a subpoena that it had served on a forensic science laboratory. Over defense counsel's objection, the court ruled that defendant had waived his previously-filed demand for trial due to his failure to appear.

Under the statute, only defendant's failure to appear for a court date set by the court constitutes a waiver of his speedy-trial demand. A status date set by the State on a subpoena is not a court date set by the court. To find that a waiver occurs whenever defendant fails to appear would make the phrase "any court date set by the court" superfluous.

The purpose of a status date for the return of a subpoena is to allow any interested party the opportunity to object to the production of documents requested in the subpoena. The defendant's failure to appear on the status date waived only his right to object to the subpoena, not his speedy-trial demand.

3. "Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by sections (a), (b) or (e) of this Section and on the day of the expiration of the delay the said period shall continue at the point at which it was suspended." [725 ILCS 5/103-5\(f\)](#).

Defendant's failure to appear on the status date for the return of the subpoena did not cause any delay in the proceedings and therefore did not temporarily suspend the speedy-trial period that began with defendant's filing of a demand for trial.

(Defendant was represented by Panel Attorney Matthew Haiduk, Geneva.)

[People v. Kilcauski, 2016 IL App \(5th\) 140526 \(No. 5-14-0526, 8/31/16\)](#)

1. The constitutional right to a speedy trial is evaluated by consideration of four factors: the length of the delay, the reasons for the delay, defendant's assertion of the right to a speedy trial, and prejudice to the defense. No single factor is necessary or sufficient to find that the right to a speedy trial has been denied. Instead, all of the factors must be considered along with any other relevant circumstances to determine whether the fundamental right to a speedy trial has been violated.

In considering whether there is a constitutional speedy-trial violation, the length of the delay is the triggering mechanism for consideration of the other factors. However, no fixed period of time is required. Deliberate delays weigh heavily against the State, while negligence weighs "a little less heavily." Whether and how the defendant asserts his right is also a factor.

In assessing prejudice, courts are to consider the interests that the constitutional right to a speedy trial is designed to protect, including preventing undue and oppressive incarceration, minimizing the anxiety and concern that accompanies public accusations, and limiting the possibility that the defense will be impaired.

2. The court concluded that under the "unique" circumstances of this case, defendant's constitutional right to a speedy trial was violated. Defendant was arrested and charged in Clinton County in June of 2013. At some point between June 24 and July 3, 2013, the sheriff's department voluntarily relinquished physical custody of the defendant to authorities in St. Louis County, Missouri. However, there were no extradition proceedings, no waiver of extradition, and no court order from Clinton County.

The Clinton County felony charge was dismissed without prejudice on August 7, 2013, because the State was unable to obtain defendant's return from Missouri and therefore could not provide a preliminary hearing within 30 days of the arrest. The State then elected to dismiss an accompanying misdemeanor charge on August 8, 2013.

Nearly a year later, the State secured an indictment on identical charges. Defendant was subsequently arrested on a warrant based on the indictments. The record showed that the defendant had never been released from the custody of the Clinton County sheriff's department, although the charges had been dismissed, and that defendant remained in the physical custody of St. Louis County until March of 2014. "Thus, there was a delay of more than a year between the date the defendant was arrested and detained on the original charges and the date of his indictment on those same charges. The delay between the dismissal of the original charges and the filing of the bill of indictment on the same charges was almost a year.

The court concluded that under these circumstances, defendant's constitutional right to a speedy trial was violated. Defendant's restraint in Clinton County began on the date he was arrested in 2013, and in the absence of an order releasing him from Clinton County custody continued through the date of the subsequent indictment and arrest. The court noted that the delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

The court also noted that defendant attempted to assert his right to a speedy trial while he was being held in St. Louis County by filing a handwritten motion requesting a speedy trial and disposition of the charges in Clinton County. Although the Clinton County charges had been dismissed one week earlier, there

was no indication that defendant was aware of the dismissal.

The court also noted that defendant was prejudiced by the delay because he was subjected to pretrial incarceration of at least eight months, he alleged that he was unable to locate the only witness to the alleged Clinton County offense, and he lost the opportunity for concurrent sentencing with the St. Louis conviction.

The court rejected the argument that the State should not be held responsible for the delay because the Clinton County Sheriff did not notify the State's Attorney or the court that it was relinquishing custody of the defendant to St. Louis County. The Sheriff's Department is part of the State, and its negligent unlawful actions are attributed to the State.

The court also rejected the State's attempt to blame defendant for failing to provide notice of his whereabouts to the Clinton County prosecutor after the transfer to St. Louis County. The record shows that the State had actual knowledge of defendant's whereabouts, because the Assistant State's Attorney stated in open court that he had spoken to authorities in St. Louis County and confirmed that defendant was in custody.

3. The court concluded that defendant's statutory right to a speedy trial was also violated. Under the speedy trial statute, the State has 120 days to begin trial once the defendant is taken into custody, unless there is delay occasioned by the defendant. 725 ILCS 5/103-5(a). Here, the speedy trial clock started to run when defendant was taken into custody on June 23, 2013. Although the Clinton County Sheriff voluntarily transferred defendant to St. Louis County authorities, defendant remained in the custody of Clinton County in the absence of an order releasing him from custody. Thus, the speedy-trial period was not tolled.

When defendant was released from Missouri custody in March 2014, therefore, he had been in continuous custody for more than eight months. Because defendant did not contribute to the delay, the trial court did not err by finding that the statutory right to a speedy trial was violated.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

**[People v. Kohler, 2012 IL App \(2d\) 100513 \(No. 2-10-0513, 4/12/12\)](#)**

“Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant . . . . The defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial made under this subsection.” [725 ILCS 5/103-5\(b\)](#).

Defendant appeared at a bond hearing after he was arrested on a warrant issued due to his failure to appear at a court date. The court ordered defendant released from custody on a personal recognizance bond and defense counsel filed a demand for speedy trial.

1. Defendant's speedy-trial demand on the date of the bond hearing was not premature on the theory that he was in custody at the time at the time that the demand was made. Unlike [People v. Garrett, 136 Ill. 2d 318, 555 N.E.2d 1136 \(1990\)](#), where the court concluded that a speedy-trial demand made about two months before defendant's release from custody did not serve to commence the 160-day statutory term for a defendant released on bail or recognizance, defendant's demand was made on the same day as his release. Once the court ordered that the defendant be released on recognizance, he was restored to liberty, the only remaining restriction on his liberty being that he attend court hearings.

2. The defendant properly served the speedy-trial demand on the assistant State's Attorney who appeared at the bond hearing, even though the arresting officer designated the Village of Long Grove as the charging entity on the citation and the Village attorney ultimately prosecuted the case. The Appellate Court dismissed the prosecution's argument to the contrary as “little more than gamesmanship and disingenuity.” “[W]e do not believe that a police officer in the field chooses who will prosecute a matter with the tick of his or her pen.”

The Illinois Vehicle Code allows a State's Attorney to authorize a municipality's attorney to prosecute a violation of the Code, but does not divest the State's Attorney of his or her right to appear in the case even when the municipal prosecutor has been authorized to try the case. [625 ILCS 5/16-102\(c\)](#). Thus the assistant State's Attorney on whom the demand was served in the absence of the municipal prosecutor

was representing the Village's interests. Defendant could reasonably expect that the assistant was going to act as prosecutor or would make sure that the actual prosecutor would be kept up to speed on significant developments such as the speedy-trial demand.

3. Defendant's absence from a subsequent court date due to his illness was not a failure to appear that waived his speedy-trial demand under the statute. Although defendant was not personally present, his counsel appeared for him and explained defendant's inability to attend the hearing due to illness. The prosecutor had been informed that defendant was ill and the court granted the motion for continuance without any objection from the prosecution. The defendant's absence did not result in the issuance of a bond-forfeiture warrant. This was not a failure to appear, but an absence and the grant of a motion to continue, which was a delay attributable to the defendant, but not a waiver of his demand. The Appellate Court also noted the inconsistency in the prosecution's argument that the absence due to illness amounted to a waiver of the speedy-trial demand, while ignoring defendant's absence on another court date at which the court had waived his appearance, although the trial court had treated both absences in the same manner.

4. Defendant's failure to object to the court setting the trial date outside of the term was of no consequence. Unlike subsection (a) of the statute, which governs when a defendant is in custody and imposes a duty on defendant to object when the trial court sets a trial date outside of the statutory period, subsection (b) imposes no equivalent duty on a defendant who is not in custody.

Because the trial court erred in denying defendant's motion to dismiss on statutory speedy-trial grounds, the Appellate Court vacated defendant's convictions.

(Defendant was represented by Assistant Defender Bruce Kirkham, Elgin.)

[People v. McGee, 2015 IL App \(1st\) 130071](#) (Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16)

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160 days](#), depending on his custodial status, unless delay is caused by the defendant. [725 ILCS 5/103-5](#). When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is "tempered by compulsory joinder principles."

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim's burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State's arguments that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant's death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner's trial testimony could not possibly have prompted the State's pretrial decision

to charge defendant with murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner's opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner's opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State's argument, holding that the phrase "jurisdiction of a single court" does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant's conviction for first-degree murder, entered conviction on the lesser-included offense of aggravated battery, and remanded for resentencing.

(Defendant was represented by Assistant Defender Kadi Weck, Chicago.)

**[People v. Moody, 2015 IL App \(1st\) 130071](#)** (Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16)

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160 days](#), depending on his custodial status, unless delay is caused by the defendant. [725 ILCS 5/103-5](#). When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is "tempered by compulsory joinder principles."

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim's burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State's arguments that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant's death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he

had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner's trial testimony could not possibly have prompted the State's pretrial decision to charge defendant with murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner's opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner's opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State's argument, holding that the phrase "jurisdiction of a single court" does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant's conviction for first-degree murder.

(Defendant was represented by Assistant Defender Sarah Curry, Chicago.)

**Village of Mundelein v. Bogachev**, \_\_\_ Ill.App.3d \_\_\_, \_\_\_ N.E.2d \_\_\_ (2d Dist. 2011) (No. 2-10-0346, 5/27/11)

1. The statutory speedy-trial provision contains two subsections. Subsection (a) applies when the defendant is in custody. Subsection (b) applies when the defendant is released on bail or recognizance. [725 ILCS 5/103-5](#). Subsection (a) requires that the defendant be tried within 120 days of the date that he was taken into custody (with certain exclusions), while subsection (b) and requires that he be tried within 160 days of the date that he demands trial (with the same exclusions).

Subsection (a) contains a provision, not contained in subsection (b), that "[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." This provision cannot be read into subsection (b). The legislature was capable of incorporating a duty to object into subsection (b) and chose not to do so. There is no general principle of fairness or forfeiture that would require *any* defendant to object to a proposed continuance to avoid having that delay charged to him.

Because defendant was on bond, subsection (b) applied, and defendant was not required to object when the court on its own motion continued his case to a date after the expiration of the statutory speedy-trial term. That period of delay could not be charged to defendant based on his failure to object to the continuance.

2. As a general rule, delay caused by a defense pretrial motion is attributable to the defendant. Even in the context of a defense motion, delay may be attributed to defendant only if his actions did in fact cause or contribute to delay. Defendant is not responsible for delay caused by crowded dockets and prosecutorial caseloads.

The trial court did not abuse its discretion in not charging defendant with the delay of the hearing of his pretrial motion after both parties answered ready on the motion. The trial court ordered continuances of the hearing on the pretrial motion on its own motion. The pretrial motion itself was a boilerplate document raising only the question of whether the arresting officer had reasonable suspicion to stop

defendant. The State provided no transcripts of the [hearings at](#) which the continuances were granted that could shed any further light on why the continuances were ordered. Thus the record shows that the continuances were based on matters outside defendant's control and responsibility, such as the court's busy schedule.

The court affirmed the order granting defendant's motion to dismiss due to a speedy-trial violation. (Defendant was represented by Assistant Defender Darren Miller, Elgin.)

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## §47-8

### **Delay Prior to Retrials**

[People v. Dodd, 58 Ill.2d 53, 317 N.E.2d 28 \(1974\)](#) The Court rejected petitioner's claim that he was denied a speedy trial after his case was remanded from the reviewing court. In the absence of "exceptional circumstances," retrial within 120 days of the circuit court's receipt of the mandate satisfies speedy trial requirements. See also, [People v. Adams, 36 Ill.2d 492, 224 N.E.2d 252 \(1967\)](#); [People v. Quick 321 Ill.App.3d 392, 748 N.E.2d 1227 \(3d Dist.2001\)](#) (where defendant is in custody from the filing of the mandate until filing the motion for discharge, he is not required to demand a speedy trial).

[People v. Trolia, 107 Ill.App.3d 487, 437 N.E.2d 804 \(1st Dist. 1982\)](#) The State is entitled to pursue a leave to appeal from the Appellate Court's reversal of defendant's conviction, and the period during which such an appeal is pending does not count for speedy retrial purposes.

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