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## CH. 46 SPEEDY TRIAL

### §46-1 Generally

#### §46-1(a) Constitutional Right

#### **United States Supreme Court**

**Betterman v. Montana**, 578 U. S. \_\_\_, 136 S. Ct. 1609, 194 L.E.2d 723 (2016) 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.

**Vermont v. Brillion**, 556 U.S. 81, 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.

**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.

**Klopfer 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.

### **Illinois Supreme Court**

**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. 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."

### **Illinois Appellate Court**

**People v. Bradshaw**, 2020 IL App (3d) 180027 Counsel was not ineffective for failing to argue that defendant's retrial violated his constitutional right to a speedy trial. Unlike the statutory speedy trial right, the constitutional speedy trial right is not defined in terms of an absolute standard of time, though a one-year delay has been held to be presumptively prejudicial. Courts apply a reasonableness standard when determining whether a lengthy pretrial period amounts to a speedy trial violation.

Here, defendant's first trial resulted in a mistrial, and a second trial was held 236 days later. A second mistrial occurred and a third trial was held 161 days later. Neither delay triggered presumptive prejudice, as both were short of one year. Even if combined, and considered a 13-month delay, this was not unreasonable given that the State contributed to only 210 days of the delay, two mistrials occurred, and defendant alleged no prejudice other than his continued incarceration.

**People v. Echols**, 2018 IL App (1st) 153156 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 is 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, 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.

**People v. Kilcauski**, 2016 IL App (5th) 140526 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.

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, without any order releasing him from Clinton County's custody.

The Clinton County charges were subsequently dismissed without prejudice because the State was unable to obtain defendant's return from Missouri and therefore could not provide a timely preliminary hearing. Nearly a year later, defendant was indicted on identical charges and arrested.

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 delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

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. And, 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.

**People v. Totzke, 2012 IL App (2d) 110823** 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.

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.

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.

**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.

**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. 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.

#### **§46-1(b) Statutory Right**

#### **§46-1(b)(1) Generally**

#### **United States Supreme Court**

**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.

### **Illinois Supreme Court**

**People v. Marcum**, 2024 IL 128687 The State charged defendant with aggravated battery, then several months later added two charges of aggravated domestic battery of the same victim based on the same incident. He was convicted of the new charges. On appeal, he argued that the new charges violated Illinois’ Speedy Trial Act. The appellate court affirmed. Although the new charges resulted in a violation of the statute, defendant’s failure to object resulted in forfeiture, and the statutory violation did not rise to the level of second-prong plain error.

The Illinois Supreme Court affirmed. Section 103-5, which codifies the right to a speedy trial in Illinois, is effectuated through section 114-1, which requires a written motion to dismiss in order to claim the right. As a matter of first impression, the court analyzed whether a speedy trial violation could be reviewed as second-prong plain error. Defendant argued it could, because the violation affected the fairness of his trial and challenged the integrity of the judicial process.

In **People v. Pearson**, 88 Ill. 2d 210 (1981), the court stressed the importance of filing a timely motion to dismiss on speedy trial grounds in accordance with the express language of section 114-1. There, the court found that by waiting until the post-trial motion to raise his speedy trial claim, defendant had “waived” the right. The court here noted that the term “waived” is used on section 114-1(b) to describe the result of a failure to file a timely motion.

Although several appellate courts have held that speedy trial errors affect “substantial fundamental rights” and are therefore reviewable as second-prong plain error, these cases conflated the constitutional and statutory rights. While the constitutional right to a speedy trial has been deemed a fundamental right, and the Illinois Speedy Trial statute is a codification of that right, the two are not coextensive. Caselaw has long held that the statutory right is invoked only by the motion to dismiss, and waived if not raised prior to conviction. The legislature would not have included the waiver language if it believed that a violation of the statute alone created an unfair trial or affected the integrity of the judicial process. Because defendant affirmatively waived his speedy trial claim, it was not reviewable as plain error. Several appellate court cases holding otherwise are overruled, including **People v. Mosley**, 2016 IL App (5th) 130223; **People v. Smith**, 2016 IL App (3d) 140235; **People v. McKinney**, 2011 IL App (1st) 100317; and **People v. Gay**, 376 Ill. App. 3d 796 (2007).

**People v. Mayfield**, 2023 IL 128092 In March 2020, the Illinois Supreme Court issued a series of emergency administrative orders in response to the COVID-19 pandemic, including an order authorizing circuit courts to toll 725 ILCS 5/103-5(a), the speedy trial statute. Defendant had been arrested on charges of domestic battery on February 16, 2020, and remained in custody awaiting trial. Defendant answered ready for trial within the 120-day

statutory speedy trial term and objected to any further delay, but his case was continued in accordance with the administrative orders. On August 11, 2020, counsel moved to dismiss the charges on speedy trial grounds. That motion was denied. Ultimately, defendant was tried and convicted on September 9, 2020.

On appeal, defendant argued that the administrative orders tolling the speedy-trial statute were unconstitutional in that they violated the separation of powers clause of the Illinois constitution by infringing on the authority of the legislature to enact laws. The appellate court disagreed, holding that the scheduling of criminal trials is a matter of procedure and thus within the primary purview of the courts, not the legislature.

The supreme court also rejected defendant's challenge, concluding that the administrative orders were an appropriate exercise of its general administrative and supervisory authority over all state courts under [article VI, section 16 of the Illinois constitution](#). While the legislative and judicial branches traditionally have overlapping authority to regulate court procedure, the circuit court here was not bound to follow the speedy trial statute because the supreme court had expressly authorized its tolling under its "general administrative and supervisory authority." Because the conflict between the speedy trial statute and the court's administrative orders concerned court procedure, the administrative orders prevail.

**People v. Rogers, 2021 IL 126163** Defendant was given a citation for DUI by a police officer, and, over the course of several months, charged with superceding DUI offenses by the state's attorney. The new charges alleged DUI under both the original statutory provision, and additional provisions. After his conviction, defendant argued on appeal that his attorney was ineffective for failing to move for dismissal on speedy-trial grounds, because his trial occurred more than 160 days beyond the date of the initial citation and the superceding charges were covered by compulsory joinder.

The Third District Appellate Court had reversed, rejecting the State's argument that no speedy trial violation occurred because, pursuant to statute, compulsory joinder applies only if the initial charges are brought by "the proper prosecuting officer." Disagreeing with its own decision in **People v. Kazenko, 2012 IL App (3d) 110529**, the court instead followed a case from the Second District, **People v. Thomas, 2014 IL App (2d) 130660**, which held that a police officer can be a "proper prosecuting officer" under the statute.

In the supreme court, the State first argued that defendant's ineffectiveness claim must fail because defendant had no right to effective assistance in a case for which his sentence was court supervision. The State cited **Scott v. Illinois, 440 U.S. 367 (1979)**, which found no federal right to counsel in cases where imprisonment is not imposed. A majority of the court disagreed. Adopting defendant's argument, the majority held that **Scott** outlined the right to *appointment* of counsel, not the right to *effective* counsel. Here, defendant hired an attorney. Thus, the right to appointment of counsel is not at issue. The question is simply what type of representation is required once a criminal defendant has an attorney. The court concluded that the "right to the assistance of counsel, appointed or not, necessarily includes the right to effective counsel."

But counsel here was not ineffective. Defendant's case took place in the Third District. When appellate court opinions conflict, the circuit court is bound by the decisions of the appellate court of the district in which it sits. Thus, had counsel moved to dismiss on speedy trial grounds, the outcome of the case would not have changed, as the trial court was bound to follow **Kazenko**. The majority remanded without resolving the conflict.

Two concurring justices chided the majority for failing to resolve the conflict. The concurrence would have followed **Kazenko**, which correctly interpreted **People v. Jackson**, 118 Ill. 2d 179 (1987). **Jackson** clearly held that compulsory joinder does not apply to any offenses that have been charged by the uniform citation and complaint form for traffic offenses, and contrary to **Thomas**, it did not allow for an exception for subsequent misdemeanor charges.

**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. 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. 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. 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).

**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. 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.

## Illinois Appellate Court

**People v. Sundell**, 2025 IL App (2d) 240490 On May 22, 2021, defendant was charged by complaint with heroin possession. On August 5, 2021, the substance was reported to have tested positive for fentanyl. On August 27, 2021, defendant was indicted for heroin possession. On December 13, 2022, defendant filed a demand for a speedy trial. On October 4, 2023, the State filed a new indictment, charging defendant with fentanyl possession. Defendant moved to dismiss the indictment, arguing it was subject to compulsory joinder, but was filed more than 160 days after defendant filed his demand for a speedy trial on the initial indictment. The trial court agreed and dismissed the indictment.

The appellate court reversed, holding defendant's failure to appear in court on several dates waived his speedy trial rights. Subsection (b) of the speedy-trial act states: "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). In **People v. Patterson**, 392 Ill. App. 3d 461 (2009), the court found defendant's absences during and after the speedy trial term constituted a waiver of all speedy trial rights. Defendant argued that **Patterson** is distinguishable, because here, defendant's failures to appear all occurred after the 160-day term had expired. However, **Patterson** explicitly rejected this argument, stating: "Section 103-5(b) says nothing to indicate that a waiver can occur only before the speedy-trial period has run. Indeed, the running of the period means only that a defendant can enforce his or her demand; it does not mean that he or she cannot waive it." This holding is supported by the provision's language that "any" missed court date will waive the demand.

**People v. Brown**, 2023 IL App (3d) 210181 Defendant was taken into custody on domestic violence charges on March 24, 2018, and was tried on September 1, 2020. He alleged counsel was ineffective for failing to move to dismiss on speedy trial grounds. The appellate court affirmed.

While in custody on the domestic violence charges, defendant was charged with intimidation. The State proceeded with the intimidation charge first. It was resolved on January 10, 2020. Pursuant to 725 ILCS 5/103-5(e), when a defendant faces multiple charges, the State has 120 days to try the defendant on at least one of the charges. Once judgment is entered on the charge upon which the State elected to proceed first, the State has another 160 days to try the defendant on the remaining charges. Thus, the State had 160 days from January 10, 2020 to try defendant for domestic violence.

Here, while 233 days elapsed from January 10, 2020, until trial on September 1, 2020, at least 77 days of that time were not attributable to the State. First, 27 days were attributable to the COVID-19 pandemic, pursuant to emergency orders by the Illinois Supreme Court. Another 50 days were attributable to defendant, who requested a continuance on May 18. Thus, counsel was not ineffective for failing to move to dismiss.

**People v. Resser**, 2023 IL App (3d) 210462 The trial court erred in denying defendant's motion to dismiss on speedy trial grounds. Following a single-vehicle accident, defendant had been charged with DUI in a uniform traffic citation. Where a defendant is charged via traffic citation, Illinois Supreme Court Rule 505 applies and provides that, if not in custody, the defendant must file a speedy trial demand as provided in 725 ILCS 5/103-5. That is, defendant must file a demand sufficient to put the State on notice that he is invoking his speedy trial right. Here, defendant filed a document titled, "appearance, plea of not guilty and jury demand." That document included the sentence, "defendant further demands a speedy trial by jury." This was sufficient to convey defendant's desire for a speedy trial in a clear and unambiguous manner, and thus satisfied Rule 505 and Section 103-5(b).

And, the trial court erred in attributing to defendant a 411-day delay, from March 25, 2019, to May 10, 2020. On March 5, 2019, the court heard the State's motion *in limine*, and by March 25, 2019, the defendant had provided the court with information it had requested at that hearing. While the court did not issue its ruling until May 10, 2020, more than a year later, no further actions were required to be performed by either party with regard to that motion after March 25, 2019. Thus, it could not be said that defendant was responsible for the delay after that date.

Further, the court erroneously believed that defendant's motions *in limine* were also pending during that 411-day period. Defendant's motions had been ruled on in open court during a hearing on October 2, 2018, at which time trial had been set for October 22, 2018. That trial date was continued when, on October 16, 2018, the State filed its motion *in limine* that was the subject of the March 2019 hearing. A docket entry erroneously indicated that the March 2019 hearing date was for defendant's motions *in limine*, but a review of the record made clear that it was the State's motion that was at issue, not defendant's. Thus, the delay from March 25, 2019, to May 10, 2020, was caused by the State's filing of its motion *in limine* and the trial court's delay in ruling on that motion. Accordingly, the trial court abused its discretion in denying defendant's motion to dismiss on speedy trial grounds.

**People v. Mayfield, 2021 IL App (2d) 200603** In the April 2020, the Illinois Supreme Court responded to the Covid-19 pandemic by issuing a series of orders authorizing trial courts to cease operations until safe to do so. The Supreme Court also tolled the Speedy Trial Act for any delays occasioned by its orders. Defendant alleged that the Supreme Court's orders infringed on the legislative branch, by ignoring a statute which had no exceptions or exemptions, and therefore violated the separation of powers doctrine of the Illinois Constitution.

The appellate court disagreed. The scheduling of criminal trials is a matter of procedure within the Supreme Court's primary constitutional authority. **Kunkel v. Walton, 179 Ill. 2d 519 (1997)**. When the court takes action under its primary constitutional authority, its orders must prevail over a legislative act.

**People v. Janusz, 2020 IL App (2d) 190017** Defendant was arrested August 1, 2014, demanded a speedy trial August 19, 2014, but was not arraigned until April 21, 2016, 630 days after arrest. This did not violate defendant's statutory right to a speedy trial. The speedy trial statute, **725 ILCS 5/103-5**, does not provide a specific time frame for arraignment. Defense counsel acquiesced to the bulk of the delays, and those counted against defendant for purposes of arraignment, as well as trial.

**People v. Tatum, 2019 IL App (1st) 162403** Defendant's failure to raise speedy trial objection in post-trial motion forfeited claim that his 120-day statutory speedy trial right was violated even though defendant objected when the State requested and obtained an extension of the term in an effort to locate a missing witness. To find that defendant had preserved the claim simply by objecting to the continuance would obviate the need for a defendant to include most issues in a post-trial motion in order to preserve them. While there is a constitutional right to a speedy trial, the constitutional issue exception did not apply because defendant argued only that his statutory speedy trial right was violated.

Further, there was no error, and therefore no plain error, where the trial court considered the State's efforts to find the missing witness and concluded that an extension

might allow the State to locate the witness. While it may have been a close call, the court's decision was not arbitrary or unreasonable, and thus not an abuse of discretion.

**People v. Kilcauski, 2016 IL App (5th) 140526** Defendant's statutory right to a speedy trial was 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.

**People v. Bauman, 2012 IL App (2d) 110544** When the determination of whether defendant's speedy-trial right was violated depends on an interpretation of the speedy trial statute, review is *de novo*.

"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. The defendant's failure to appear on the status date waived only his right to object to the subpoena, not his speedy-trial demand.

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.

**Village of Mundelein v. Bogachev, 2011 IL App (2d) 100346** 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.

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.

**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.

**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).

#### **§46-1(b)(2)**

#### **Demand for Trial**

#### **Illinois Supreme Court**

**People v. Yankaway**, 2025 IL 130207 Defendant was arrested on April 7, 2020, and tried on September 19, 2022. He was found guilty of attempted murder. On appeal, he argued that trial counsel was ineffective for failing to file a speedy-trial demand under the intrastate detainers statute, 730 ILCS 5/3-8-10, as he was in custody on another charge while awaiting trial in the instant case. He further alleged counsel should have objected to a February 28, 2022, motion for continuance, which placed his trial date outside of the statutory speedy-trial term. Defendant also argued that, regardless, this continuance should not have been attributed to him, because he personally disavowed counsel's decision.

The appellate court held that while counsel performed deficiently by not filing a demand under the intrastate detainers statute, defendant could not show prejudice because he could not prove that, had he filed a speedy-trial demand, his trial would not have been moved to a date within the term.

The supreme court held that defendant was not subject to the intrastate detainers statute. Instead, the speedy-trial provision of [725 ILCS 5/103-5\(e\)](#) applies. Under section 103-5(e), when a defendant faces multiple charges in the same county, trial on a pending charge must take place within 160 days of the judgment on the prior charge. By contrast, the intrastate detainers provision, which requires a demand to initiate the speedy-trial clock, applies only to inmates held in an IDOC facility. Here, defendant was in the Peoria County Jail on multiple charges, and was sentenced on an initial charge on September 28, 2020, at which time the 160-day clock for the instant case automatically began. Thus, the statute did not apply, and counsel could not be ineffective for failing to file a demand under the intrastate detainers statute.

The supreme court agreed, however, that counsel performed deficiently by not objecting to a crucial continuance. The record showed that defendant informed defense counsel of his request for a speedy trial prior to counsel agreeing to the February 28, 2022 continuance, and counsel failed to object. On that date, the court granted a continuance, which it attributed to both parties, until July 11, 2022 – a date beyond the 160-day speedy-trial term. “[D]efense counsel was duty-bound to protect that right [to a speedy trial] and his failure to do so established that his performance fell below an objective standard of reasonableness.”

As for prejudice, neither party could offer more than speculation. The defendant argued that if counsel objected, the charges would have been dismissed in September, at the conclusion of the 160 days. But this ignores the possibility that the State might have changed its pretrial strategy, and that the circuit court, which was aware of the speedy trial implications of each continuance, might have changed its approach. Because defendant has the burden to show a reasonable likelihood of a different outcome, and because speculation cannot overcome that burden, defendant could not establish prejudice. To the extent that [People v. Mooney, 2019 IL App \(3d\) 150607](#) holds otherwise, it is overruled.

The court rejected defendant’s assertion that based on this record, the delay was nevertheless improperly attributed to him because he personally objected. When counsel agrees to a continuance, that delay is attributable to defendant. Defendant noted that unlike [725 ILCS 103\(a\)](#), section 103-5(e) does not expressly require a defense objection to preserve the right. But the court held that in this case, defense counsel affirmatively waived any speedy trial claims by agreeing to the continuance and new date.

[People v. Hartfield, 2022 IL 126729](#) After the State’s first request for a continuance, defense counsel objected, stating that defendant was in custody and ready for trial. The trial court noted the objection. Defendant’s trial eventually began more than 120 days after he was placed in custody. On appeal, he alleged that because the delay after the State’s first continuance was not attributable to the defense, his statutory speedy trial right was violated.

The Supreme Court found no statutory speedy trial violation. A defendant in custody must be tried within 120 days from the date she was taken into custody unless delay is occasioned by the defendant. Delay is considered to be agreed to by the defendant unless “she objects to the delay by making a written demand for trial or an oral demand for trial on the record.” The statute does not mandate any “magic words” constituting a demand for trial, but it requires some affirmative statement in the record requesting a speedy trial.

Here, the objection to the State’s continuance did not sufficiently invoke the defendant’s speedy trial rights to be considered a demand for trial. Although defense counsel referenced defendant’s custodial status, a fact relevant to the Speedy Trial Act, the fact that defendant was in custody is relevant for other reasons as well. Additionally, while the trial court acknowledged the objection, it did not do so specifically in the context of a trial demand.

Thus, the defense did not sufficiently object so as to avoid occasioning the delay for purposes of the statutory right to a speedy trial.

**People v. Hunter, 2013 IL 114100** 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.

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.

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.

**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. 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. 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. 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. 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. 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. 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.”

### **Illinois Appellate Court**

**People v. Stevenson**, 2023 IL App (3d) 220055 After a single car accident on August 13, 2018, defendant was taken into custody. He was indicted on September 20, 2018 for driving on a revoked license, and posted bail on December 18, 2018. The State added DUI charges on March 14, 2019, and again on August 20, 2019. He eventually pled guilty to one of the aggravated DUI charges filed on August 20, 2019.

The appellate court rejected defendant’s claim that the plea was involuntary due to the fact that the charge should have been dismissed on speedy trial grounds. Even if the charge was subject to compulsory joinder, such that any delay attributable to the State on the initial charge would also apply to the August 20 charges, the speedy trial clock had not started because no trial demand had been made.

While no demand is necessary for defendants in custody to begin the speedy trial clock under **725 ILCS 5/103-5(a)**, **section 103-5(b)** imposes a duty on defendants who are not in custody to demand a speedy trial in writing. Section 103-5(b) also addresses the situation of a defendant who is in custody and is subsequently released, and requires a written demand before the days in custody are counted toward the speedy trial clock.

**People v. Resser**, 2023 IL App (3d) 210462 The trial court erred in denying defendant’s motion to dismiss on speedy trial grounds. Following a single-vehicle accident, defendant had been charged with DUI in a uniform traffic citation. Where a defendant is charged via traffic citation, **Illinois Supreme Court Rule 505** applies and provides that, if not in custody, the defendant must file a speedy trial demand as provided in **725 ILCS 5/103-5**. That is, defendant must file a demand sufficient to put the State on notice that he is invoking his speedy trial right. Here, defendant filed a document titled, “appearance, plea of not guilty and jury demand.” That document included the sentence, “defendant further demands a speedy trial by jury.” This was sufficient to convey defendant’s desire for a speedy trial in a clear and unambiguous manner, and thus satisfied **Rule 505** and Section 103-5(b).

And, the trial court erred in attributing to defendant a 411-day delay, from March 25, 2019, to May 10, 2020. On March 5, 2019, the court heard the State's motion *in limine*, and by March 25, 2019, the defendant had provided the court with information it had requested at that hearing. While the court did not issue its ruling until May 10, 2020, more than a year later, no further actions were required to be performed by either party with regard to that motion after March 25, 2019. Thus, it could not be said that defendant was responsible for the delay after that date.

Further, the court erroneously believed that defendant's motions *in limine* were also pending during that 411-day period. Defendant's motions had been ruled on in open court during a hearing on October 2, 2018, at which time trial had been set for October 22, 2018. That trial date was continued when, on October 16, 2018, the State filed its motion *in limine* that was the subject of the March 2019 hearing. A docket entry erroneously indicated that the March 2019 hearing date was for defendant's motions *in limine*, but a review of the record made clear that it was the State's motion that was at issue, not defendant's. Thus, the delay from March 25, 2019, to May 10, 2020, was caused by the State's filing of its motion *in limine* and the trial court's delay in ruling on that motion. Accordingly, the trial court abused its discretion in denying defendant's motion to dismiss on speedy trial grounds.

**People v. Griffin, 2022 IL App (1st) 190499** The trial court did not err when it honored defendant's demand for a speedy trial despite defense counsel's statements, 13 days before the trial date, that he was not ready for trial, that he still needed to interview witnesses, and that he had a conflicting matter scheduled on the date set for defendant's trial.

Even though the decision to demand trial is not one held by the defendant alone, a trial court is not obligated to ignore a defendant's trial demand in favor of defense counsel's request for a continuance. Defendants have a right to a speedy trial and the right to effective assistance of counsel; invocation of one of these rights might infringe on the other. In a case where counsel wants a continuance and the defendant demands trial, the trial court may honor the trial demand as long as it ensures that defendant understands the consequences of his decision, as the court did here.

In any event, defendant failed to show prejudice by establishing that counsel's performance suffered from lack of preparation. The case was neither factually nor legally complex, and counsel competently subjected the State's case to adversarial testing.

**People v. Hartfield, 2020 IL App (4th) 170787** Under section 103-5(a), a State request for a continuance is considered to be by agreement, unless defendant "objects to the delay by making a written demand for trial or an oral demand for trial on the record."

Defendant here argued that his attorney's objection to a State continuance satisfied this requirement despite the absence of an explicit trial demand. He argued that defense counsel objected, informed the court he was ready for trial, and noted defendant was in custody (a factor in the speedy trial analysis). He also argued that by noting the objection for the record, the trial court understood the speedy trial implications of the objection. But the Appellate Court held that the objection did not meet the standard of section 103-5(a), because defense counsel never demanded trial. "[U]nder the plain language of section 103-5(a), an objection to a proposed delay, without a demand for trial, operates as an agreement to the delay-period: no exceptions, no limitations, no qualifications."

**People v. Jones, 2018 IL App (1st) 151307** 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.

**People v. Payne, 2015 IL App (2d) 120856** 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.

**People v. Galloway, 2014 IL App (1st) 123004** 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. The Appellate Court disagreed with defendant’s broad interpretation of what constitutes the set court date. 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.

**People v. Higgenbotham**, 2012 IL App (1st) 110434 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 725 ILCS 5/103-5(b) into a delay occasioned by defendant under 725 ILCS 5/103-5(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.

**People v. Kohler**, 2012 IL App (2d) 100513 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.

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.

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 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's absence from a 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.

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.

**People v. Minor**, 2011 IL App (1st) 101097 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. Patterson**, 392 Ill.App.3d 461, 912 N.E.2d 244 (2d Dist. 2009) 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 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.

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."

**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. 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. 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. 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. 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.

### **§46-1(b)(3)**

#### **Motion for Discharge**

#### **Illinois Supreme Court**

**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. 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.

#### **Illinois Appellate Court**

**People v. Isbell**, 2020 IL App (3d) 180279 Where additional charges arise from the same facts as the original charges, and the State had knowledge of those facts at the commencement of prosecution, the speedy trial term for the new charges is the same as that applied to the original charges. Continuances obtained in connection with the original charges cannot be attributed to the defense on the new charges because those new charges were not before the court at the time.

Here, defendant was originally charged with two counts of domestic battery based on insulting or provoking physical contact. Subsequently, a third count of domestic battery was added based on bodily harm. The new count also alleged different conduct than the first two counts. Because the new charge alleged both new elements and new conduct, it was a new and additional charge for purposes of the speedy trial analysis. Defendant was not brought to trial on that count until well outside of the speedy trial period where the new count was not added until more than a year after the original charges were filed. None of the continuances on the original charges could be attributed to defendant on the new charge. A motion to dismiss that charge would have been meritorious, and therefore trial counsel was ineffective for not bringing such a motion. Accordingly, defendant's conviction on the additional domestic battery charge was reversed outright.

**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. 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. 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.

## §46-2

### Delay in Commencing Prosecution

#### United States Supreme Court

**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.

#### Illinois Supreme Court

**People v. Cross**, 2022 IL 127907 On appeal from his conviction of first degree murder, defendant argued that he was not tried within 120 days of his arrest, thereby violating his statutory right to a speedy trial. In particular, defendant argued that the trial court erred when it attributed 34 days of delay to him based on his belated disclosure of an alibi defense, even though that disclosure did not move the pending trial date. The Court rejected that argument and held that a trial date need not be postponed for a delay to be attributed to a defendant.

At the time of his alibi disclosure, the matter had been pending for more than a year, and defendant’s trial was set for September 24, 2018. That date had been set when defendant

announced ready for trial on July 16, 2018. The period from July 16 to September 24 was originally attributed to the State for purposes of calculating the speedy trial term. But, when the alibi disclosure was made on August 21, 2018, the trial judge decided that the 34-day period from August 21 to September 24 instead would be attributed to defendant. Subsequently, on September 24, the State sought a continuance due to scheduling problems for its experts; the trial was rescheduled to November 6, 2018. That date fell outside of the original speedy trial term, which would have run on October 27, 2018, had the court not changed the 34-day period from August 21 to September 24 from delay attributed to the State to delay attributed to defendant.

Defendant argued that the trial court erred in reallocating the 34-day period of delay to the defense because defendant's alibi disclosure did not cause the pending trial date to be rescheduled. The Supreme Court held that, while action by a defendant that causes a trial date to be rescheduled is one example of a delay occasioned by defendant, postponing a trial date is not *required* for a defendant's action to toll the statutory speedy trial term. A trial court's decision to attribute delay to a defendant is given great deference and is reviewed for an abuse of discretion. Here, the Court held that defendant's late disclosure of his alibi defense impacted the State's ability to present its case, even if it did not necessitate a continuance of the trial date. The trial judge properly recognized the impact of the late disclosure in attributing 34 days of delay to defendant, and thus there was no abuse of discretion.

The dissenting justice would have found error in the court's decision to change its attribution of 34 days of delay from the State to defendant. The State's actions on July 16 had already caused the delay to September 24, and defendant's alibi disclosure in the middle of that period did nothing to alter or increase the delay.

**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. 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 filed to specify, in any of the counts, the grounds by which it sought to toll the statutory period.

**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. 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.

### **Illinois Appellate Court**

**People v. Soto**, 2022 IL App (1st) 201208 Six year pre-indictment delay did not warrant dismissal of charges. There is no right to be arrested once an alleged offense has occurred. Delay before indictment or arrest does not raise a speedy trial issue. Under **People v. Lawson**, 67 Ill. 2d 449 (1977), pre-indictment delay is assessed to determine whether it resulted in a denial of due process, which requires a showing that defendant suffered actual and substantial prejudice. If defendant shows prejudice, the burden shifts to the State to show the delay was reasonable. And, if the State meets its burden, the court must balance the interests of the defendant and the public in determining whether dismissal of the charges is warranted because of the delay. Here, defendant failed to establish prejudice, so the **Lawson** analysis did not proceed any further. While the Appellate Court noted its displeasure with the lengthy pre-indictment delay, defendant’s claims of prejudice were speculative and thus there was no showing that he was deprived of due process.

**People v. Goad**, 2013 IL App (4th) 120604 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*.

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 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.

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.

[People v. Gay](#), 2011 IL App (4th) 100009 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.

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\(e\)](#).

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.

**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.

**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. 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. 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.

### §46-3

#### “In Custody” on Multiple Charges

#### United States Supreme Court

**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).

#### Illinois Supreme Court

**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. 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. 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. 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. 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. 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.

### **Illinois Appellate Court**

**People v. Brownlee**, 2025 IL App (2d) 250198 When a defendant is denied pretrial release, 720 ILCS 5/110-6.1(I) requires that he be tried within 90 days of the entry of the detention order on that offense, excluding any delay attributable to him or any continuance granted to the State for good cause shown pursuant to 725 ILCS 5/103-5 of the Speedy Trial Act. If a defendant is not brought to trial within that time, he must be released.

Here, defendant was facing charges in multiple separate cases, and the State elected to proceed on a different case first, resulting in defendant not being tried in the instant case within 90 days of his being detained. The State argued that the court should incorporate section 103-5(e) of the Speedy Trial Act, which allows an extended speedy trial period for subsequent prosecutions where a defendant has multiple cases pending, and should thus allow additional time under 110-6.1(I) to resolve separate cases without requiring defendant’s conditional release.

The appellate court rejected the State’s argument. The plain language of Section 110-6.1(I) is mandatory, and it does not contain any exception for a defendant who has multiple pending cases. And, the court declined to read such an exception into the statute here. “No rule of construction authorizes [a reviewing] court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include.” Thus, the trial court erred in concluding that defendant was not entitled to release after expiration of 90 days.

While defendant was released during the pendency of this appeal, the court elected to review the issue under the public-interest exception to the mootness doctrine. The matter

was of a public nature where all individuals charged with a detainable offense are subject to the provisions of the Code of Criminal Procedure. The circumstances were likely to recur given that defendants are often involved in more than one case at a time. And, the parties below demonstrated confusion about how the provisions of the Code applied, necessitating guidance from the appellate court.

**People v. Hopkins, 2020 IL App (3d) 170253** While on MSR for an unrelated offense, defendant was charged with attempt murder and armed habitual criminal. DOC revoked his MSR based on these charges and placed him back into custody. Under the Intrastate Detainers Act, a defendant who is in DOC custody for an unrelated offense is not “in custody” on pending charges for purposes of the Speedy Trial Act, and thus must be tried in 160 days, not 120 days. While defendant argued that an amendment to the Detainers Act excludes those on MSR, the Appellate Court held that the amendment did not apply. Once the DOC took him into custody for violating MSR, he was in DOC custody, not on MSR.

**People v. Meeks, 2020 IL App (2d) 180263** When defendant was arrested in 2009, he already had criminal charges pending in a 2008 case. The State initially elected to proceed to trial first on the 2008 case, but on the trial date, the State nolle prossed the 2008 charges because it could not obtain a key witness. Defendant subsequently sought, unsuccessfully, to dismiss the 2009 charges on speedy trial grounds.

Under **725 ILCS 5/103-5(e)**, when the State nol-prossed the 2008 case, it had 120 days to bring defendant to trial on the 2009 charges. Within that 120 days, however, defendant was released from custody, at which point he filed a 160-day speedy trial demand pursuant to Section 103-5(b). Defendant’s trial began on the 160th day, and was therefore timely. The Appellate Court refused to consider defendant’s argument, raised for the first time on appeal, that the court also should have counted defendant’s time in custody before the State made its election on the 2008 case, which would have put his trial outside of the 160-day term. Arguments raised for the first time on appeal are forfeited.

**People v. Smith, 2016 IL App (3d) 140235** 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.

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.

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.

**People v. Payne, 2015 IL App (2d) 120856** 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.

**People v. Raymer, 2015 IL App (5th) 130255 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.

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.”

**People v. Adams, 2012 IL App (5th) 100088** The Interstate Agreement on Detainers 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.

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.

**People v. Wigman, 2012 IL App (2d) 100736** 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.

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.

Even had defendant's Kendall County speedy trial demand been effective, the statutory right to a speedy trial was not violated. The 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 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."

**People v. Thompson, 2012 IL App (2d) 110396** 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.

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.

**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.

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

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.”

**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. 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.

**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.

#### **§46-4**

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

#### **United States Supreme Court**

**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.

#### **Illinois Appellate Court**

**People v. Schaefer**, 2020 IL App (5th) 180461 Defendant had been taken into custody on a previous charge, was convicted and sentenced. Before his incarceration, he was granted recognizance to appear at the preliminary hearing for the instant case. The court in the instant case set a bond, and defendant was released. He was then taken back into custody on the prior charge. In the instant case, he filed a speedy trial objection 120 days after he was charged. The trial court rejected the claim, finding the 160-day limit applied because defendant had bonded out in the instant case. He was tried and convicted within 160 days.

On appeal, defendant alleged ineffective assistance of counsel for not moving to revoke bond once he was taken back into custody. Defendant argued that by failing to revoke his bond, counsel prevented the application of the 120-day speedy trial term, rather than the 160-day term. The Appellate Court refused to find prejudice. While it was true that counsel could have ensured application of the 120-day term had the bond been revoked (see **People v. Arnhold**, 115 Ill. 2d 379, 383 (1987)), the Appellate Court held that it would not assume the 120-day deadline would have passed without a trial had bond been revoked. On this record, the State and trial court appeared cognizant of the applicable speedy trial date, and the State would have had 120 days from the bond revocation to try defendant.

**People v. Kilcauski, 2016 IL App (5th) 140526** 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.

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, without any order releasing him from Clinton County’s custody.

The Clinton County charges were subsequently dismissed without prejudice because the State was unable to obtain defendant’s return from Missouri and therefore could not provide a timely preliminary hearing. Nearly a year later, defendant was indicted on identical charges and arrested.

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 delay was for more than a year and was therefore presumptively prejudicial, and that the State offered no justification for the delay.

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. And, 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.

**People v. Totzke, 2012 IL App (2d) 110823** 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.

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.

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.

**People v. Weddell**, 405 Ill.App.3d 424, 939 N.E.2d 504 (2d Dist. 2010) 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.

**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.

## **§46-5**

### **Extending and Tolling the Statutory Term**

#### **§46-5(a)**

##### **Generally**

### **Illinois Supreme Court**

**People v. Lacy**, 2013 IL 113216 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.

### **Illinois Appellate Court**

**People v. Johnson**, 2023 IL App (4th) 210662 Defendant alleged a speedy trial violation where the trial court tolled the speedy trial statute in accordance with an emergency order of the Illinois Supreme Court related to COVID-19. The appellate court found defendant forfeited his speedy trial challenge by failing to move to dismiss in the trial court. He could not establish plain error because there was no clear or obvious error. To the extent the supreme court’s response conflicted with the speedy trial statute, the court’s order prevails in light of its basic authority over the procedural administration of the courts. Moreover, the error could not be “clear” because even if defendant’s argument had merit, the error would not have been obvious to the trial judge who was following an order of a higher court at the time it tolled the speedy trial statute.

While defendant's brief mentioned a violation of his constitutional right to a speedy trial, the defendant did not cite the relevant standards and therefore the issue was insufficiently briefed and forfeited. Even if the court reviewed for plain error (which defendant did not request), the court would have found no constitutional violation because, of the four relevant factors, (1) the defendant's assertion of the right; (2) the length of the delay; (3) the reasons for the delay; and (4) prejudice to the defendant, only the first weighed heavily in favor of defendant. Thus, no clear or obvious error occurred.

**People v. Higgenbotham**, 2012 IL App (1st) 110434 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).

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.

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).

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

## **§46-5(b)**

### **Extending the Term**

#### **Illinois Supreme Court**

**People v. McKinstry**, 2022 IL App (3d) 180598 725 ILCS 5/103-5(c) provides that the State may obtain a continuance of the statutory speedy trial term for an additional 120 days where, "the State has exercised without success due diligence to obtain results of DNA testing" that is material to the case. In **People v. Swanson**, 322 Ill. App. 3d 339 (3d Dist. 2001), the court provided three requirements for demonstrating due diligence: (1) a full explanation by the State of every step taken to complete DNA testing within the 120-day term, (2) a showing

that those steps, taken together, comprised a course of action that a reasonable and prudent person intent on completing testing within 120 days would follow, and (3) the State's explanation as to why its efforts were unsuccessful and resulted in unavoidable delay.

Here, the State sought a 120-day continuance *after* having received the DNA results so that the prosecutor could "explore if there's any other options." The trial court granted that continuance as though it was a "mere formality," over defense counsel's assertion that she was ready to proceed to trial. This, in turn, led to further delays because defendant's case had to be reassigned to a new public defender when defendant's attorney was moved to a different division. Under these unique circumstances, the delay caused by the reassignment of the case within the public defender's office was not attributed to the defense because that delay was caused by the court's erroneous grant of the State's motion to continue. That delay resulted in the State's failure to bring defendant to trial within 120 days. Thus, the Appellate Court reversed defendant's conviction outright.

**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.

### **Illinois Appellate Court**

**People v. Murry**, 2025 IL App (1st) 221202 The trial court did not abuse its discretion by granting the State's request to extend the speedy trial term. The speedy trial statute generally requires "[e]very person in custody in this State for an alleged offense" to "be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody." 725 ILCS 5/103-5(a) The trial court may extend the period for 60 days if it "determines that the State has exercised without success due diligence to obtain evidence material to the case" and finds "reasonable grounds to believe that such evidence may be obtained at a later day." 725 ILCS 5/103-5(c).

Here, the original speedy trial term began in August of 2018, and would have ended on March 28, 2019. The State documented at least 26 attempts to locate its key witness between November 2018 and February 2019, until learning, on March 18, 2019, that he was in custody in Wisconsin. The State served a subpoena on the witness and received a 60-day extension of the term.

Defendant argued that the trial court erred in granting this extension because the State failed to attempt to procure the witnesses' presence in the 10 days after they found him, before the end of the original term. The appellate court rejected this claim because the process of bringing the witness to court while in custody in Wisconsin required multiple steps, including a subpoena, a hearing, approval from the Wisconsin judge, and coordination with Wisconsin authorities for the transfer. The State acted with diligence by starting the process with a subpoena the day after the witness's arrest. Under these circumstances, the trial court's decision to approve an extension was proper.

**People v. Williams, 2023 IL App (1st) 192463** The trial court did not abuse its discretion when it granted the State an extension of the speedy trial term in order to locate a key witness. Defendant argued that the State failed to exercise due diligence because its search for the witness began after the initial trial date, with 69 days remaining in the 120-day statutory speedy trial term. The appellate court found the State acted with sufficient due diligence, citing **People v. Smith, 268 Ill. App. 3d 1008 (1994)**, for the proposition that the State need not act by the initial trial date as long as it acts with substantial time remaining in the speedy trial term. Furthermore, the State presented sufficient evidence of diligence in the form of an investigator's reports, which detailed their research, visits to relatives, social media contacts, surveillance, and other methods of locating the witness over a period of months. Thus, the trial court did not abuse its discretion in granting the extension.

**People v. Curry, 2020 IL App (2d) 180148** The trial court did not abuse its discretion when it granted the State's request for an extension of the speedy trial term to obtain DNA results. Under **725 ILCS 5/103-5(c)**, the court may continue a case for up to 120 days for the State to obtain results of DNA testing where the State has exercised due diligence to obtain those results. Here, the State submitted the sexual assault kit to the lab within a week of when defendant was taken into custody, but the lab had a one-year backlog except where a case is set for trial. Defendant did not demand trial for several months, and once he did, the State contacted the lab in an effort to expedite testing. The State was not required to seek periodic updates on the status of DNA testing during the period when the case was not yet set for trial.

**People v. Tatum, 2019 IL App (1st) 162403** Defendant's failure to raise speedy trial objection in post-trial motion forfeited claim that his 120-day statutory speedy trial right was violated even though defendant objected when the State requested and obtained an extension of the term in an effort to locate a missing witness. To find that defendant had preserved the claim simply by objecting to the continuance would obviate the need for a defendant to include most issues in a post-trial motion in order to preserve them. While there is a constitutional right to a speedy trial, the constitutional issue exception did not apply because defendant argued only that his statutory speedy trial right was violated.

Further, there was no error, and therefore no plain error, where the trial court considered the State's efforts to find the missing witness and concluded that an extension might allow the State to locate the witness. While it may have been a close call, the court's decision was not arbitrary or unreasonable, and thus not an abuse of discretion.

**People v. Ealy, 2019 IL App (1st) 161575** Extension of the speedy trial term for the State to obtain the presence of a witness was not improper. The court did not abuse its discretion when it found that the State had exercised due diligence in attempting to locate the witness

where the State made multiple attempts to subpoena the witness during the six months leading up to its request for a 60-day extension of the term pursuant to [725 ILCS 5/103-5\(a\)](#).

**People v. Connors, 2017 IL App (1st) 162440** 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.

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. Defendant had announced at several hearings that he was ready for trial, but the prosecution obtained continuances because the trooper had not appeared. 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 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 “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.

**People v. Pettis, 2017 IL App (4th) 151006** 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.

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.

**People v. Workman**, 368 Ill.App.3d 778, 858 N.E.2d 886 (5th Dist. 2006) 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. 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. 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).

**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).

#### **§46-5(c)**

#### **Tolling the Term**

#### **Illinois Supreme Court**

**People v. Mayfield**, 2023 IL 128092 In March 2020, the Illinois Supreme Court issued a series of emergency administrative orders in response to the COVID-19 pandemic, including an order authorizing circuit courts to toll 725 ILCS 5/103-5(a), the speedy trial statute. Defendant had been arrested on charges of domestic battery on February 16, 2020, and remained in custody awaiting trial. Defendant answered ready for trial within the 120-day statutory speedy trial term and objected to any further delay, but his case was continued in accordance with the administrative orders. On August 11, 2020, counsel moved to dismiss the charges on speedy trial grounds. That motion was denied. Ultimately, defendant was tried and convicted on September 9, 2020.

On appeal, defendant argued that the administrative orders tolling the speedy-trial statute were unconstitutional in that they violated the separation of powers clause of the Illinois constitution by infringing on the authority of the legislature to enact laws. The appellate court disagreed, holding that the scheduling of criminal trials is a matter of procedure and thus within the primary purview of the courts, not the legislature.

The supreme court also rejected defendant's challenge, concluding that the administrative orders were an appropriate exercise of its general administrative and supervisory authority over all state courts under [article VI, section 16 of the Illinois constitution](#). While the legislative and judicial branches traditionally have overlapping authority to regulate court procedure, the circuit court here was not bound to follow the speedy trial statute because the supreme court had expressly authorized its tolling under its "general administrative and supervisory authority." Because the conflict between the speedy trial statute and the court's administrative orders concerned court procedure, the administrative orders prevail.

**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.

### Illinois Appellate Court

**People v. Forbes**, 2024 IL App (3d) 230152 The trial court dismissed the charges against defendant, finding the State violated the 120-day statutory speedy-trial term. The appellate court disagreed and reinstated the charges.

The dispute between the parties over the speedy-trial term stemmed from the defendant's filing and subsequent withdrawal of a **Franks** motion. The parties agreed that the filing of the motion tolled the speedy-trial term at least until the hearing date of February 2, 2023. But defendant moved to withdraw the motion, and demanded trial, on December 28, 2022. The question was whether the withdrawal of the motion restarted the clock immediately, or if the clock restarted only after the court set a new trial date. Notably, the defense did not file its withdrawal and trial demand in court; the trial court only learned of the filing at the February 2 hearing date.

The appellate court agreed with the State, holding that defendant's mere filing of a motion to withdraw his **Franks** motion, which was not otherwise called for hearing and disposition, did not remove the **Franks** motion from the court's call and, concomitantly, did not operate to restart the speedy-trial term. Delay attributable to a party includes the time it takes to hear and resolve the issues a party raises. Until the court became aware of the motion to withdraw and could grant the motion and reset the case for trial, the speedy-trial clock remained tolled.

**People v. Ballard**, 2022 IL App (1st) 210762 The Illinois Supreme Court's orders suspending the statutory speedy trial statute during the COVID-19 pandemic did not violate constitutional separate of powers principles. Following the second district's decision in

**People v. Mayfield, 2021 IL App (2d) 200603**, the court held that the Supreme Court’s constitutional authority over its procedural administration encompasses the scheduling of criminal trials. Thus, the Court had the authority to suspend the speedy trial term, notwithstanding the speedy trial statute. The orders did not violate separation of powers.

The court also concluded that there was no violation of the speedy trial statute here. Prior to the issuance of the emergency orders tolling the speedy trial term, only 44 days of defendant’s term had run. When defendant’s trial began on May 10, 2021, the speedy trial statute remained tolled by Supreme Court order, and thus the delays in question did not count toward defendant’s speedy trial term.

**People v. Mayfield, 2021 IL App (2d) 200603** In the April 2020, the Illinois Supreme Court responded to the Covid-19 pandemic by issuing a series of orders authorizing trial courts to cease operations until safe to do so. The Supreme Court also tolled the Speedy Trial Act for any delays occasioned by its orders. Defendant alleged that the Supreme Court’s orders infringed on the legislative branch, by ignoring a statute which had no exceptions or exemptions, and therefore violated the separation of powers doctrine of the Illinois Constitution.

The appellate court disagreed. The scheduling of criminal trials is a matter of procedure within the Supreme Court’s primary constitutional authority. **Kunkel v. Walton, 179 Ill. 2d 519 (1997)**. When the court takes action under its primary constitutional authority, its orders must prevail over a legislative act.

**People v. Cross, 2021 IL App (4th) 190114** The trial court did not abuse its discretion when it attributed 34 days of pretrial “delay” to the defendant. In the middle of a continuance occasioned by the State, the defense supplemented its answer to discovery with a new alibi witness. The trial date remained set for about one month later. The State asked that the time between the last continuance and the trial date be attributed to the defense in light of the amended answer. The trial court found that the time between the amended answer and the trial date would be attributed to the defense. The trial was later pushed back for unrelated reasons, such that, had the above delay been attributed to the State, 131 days of delay occasioned by the State would have passed prior to trial.

The Appellate Court majority found that the circuit court did not abuse its discretion when it found that the disclosure of a new alibi witness caused a delay occasioned by the defense. It rejected defendant’s argument that no “delay” occurred because the disclosure did not push back the trial date. The bulk of Illinois’ speedy trial jurisprudence analyzes delays without consideration of whether they pushed back the trial date, instead looking at their effect on the “discharge date,” or date the speedy trial ends. While several cases do define a delay as an act that *does* push back the trial date, the majority believed this formulation of the rule conveyed a sufficient but not necessary condition. Moreover, the trial court’s ruling had a basis in Rule 415(g)(i), which allows the court to “enter such other order as it deems just” when a discovery violation occurs. Here, the defense’s untimely disclosure of an alibi witness warranted an order from the trial court attributing the delay to defendant.

The partial dissent found no support in the caselaw for the majority’s holding that a “delay” that does not result in the suspension of the trial date can be attributable to defendant. In every case cited by the majority for the proposition that movement of the trial date is not a factor in this analysis, all involved cases in which the trial date had not been set. Otherwise, the Supreme Court has clearly and consistently defined “delay” as an act that results in postponement of trial.

**People v. Kilcauski**, 2016 IL App (5th) 140526 Defendant’s statutory right to a speedy trial was 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.

**People v. Raymer**, 2015 IL App (5th) 130255 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.

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.”

**People v. Kazenko**, 2012 IL App (3d) 110529 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.

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). 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.

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.

**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. 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. 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. 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).

## §46-6

### Delay Attributed to Defendant

#### Illinois Supreme Court

**People v. Yankaway**, 2025 IL 130207 Defendant was arrested on April 7, 2020, and tried on September 19, 2022. He was found guilty of attempted murder. On appeal, he argued that trial counsel was ineffective for failing to file a speedy-trial demand under the intrastate detainers statute, 730 ILCS 5/3-8-10, as he was in custody on another charge while awaiting trial in the instant case. He further alleged counsel should have objected to a February 28, 2022, motion for continuance, which placed his trial date outside of the statutory speedy-trial term. Defendant also argued that, regardless, this continuance should not have been attributed to him, because he personally disavowed counsel's decision.

The appellate court held that while counsel performed deficiently by not filing a demand under the intrastate detainers statute, defendant could not show prejudice because he could not prove that, had he filed a speedy-trial demand, his trial would not have been moved to a date within the term.

The supreme court held that defendant was not subject to the intrastate detainers statute. Instead, the speedy-trial provision of 725 ILCS 5/103-5(e) applies. Under section 103-5(e), when a defendant faces multiple charges in the same county, trial on a pending charge

must take place within 160 days of the judgment on the prior charge. By contrast, the intrastate detainers provision, which requires a demand to initiate the speedy-trial clock, applies only to inmates held in an IDOC facility. Here, defendant was in the Peoria County Jail on multiple charges, and was sentenced on an initial charge on September 28, 2020, at which time the 160-day clock for the instant case automatically began. Thus, the statute did not apply, and counsel could not be ineffective for failing to file a demand under the intrastate detainers statute.

The supreme court agreed, however, that counsel performed deficiently by not objecting to a crucial continuance. The record showed that defendant informed defense counsel of his request for a speedy trial prior to counsel agreeing to the February 28, 2022 continuance, and counsel failed to object. On that date, the court granted a continuance, which it attributed to both parties, until July 11, 2022 – a date beyond the 160-day speedy-trial term. “[D]efense counsel was duty-bound to protect that right [to a speedy trial] and his failure to do so established that his performance fell below an objective standard of reasonableness.”

As for prejudice, neither party could offer more than speculation. The defendant argued that if counsel objected, the charges would have been dismissed in September, at the conclusion of the 160 days. But this ignores the possibility that the State might have changed its pretrial strategy, and that the circuit court, which was aware of the speedy trial implications of each continuance, might have changed its approach. Because defendant has the burden to show a reasonable likelihood of a different outcome, and because speculation cannot overcome that burden, defendant could not establish prejudice. To the extent that [People v. Mooney, 2019 IL App \(3d\) 150607](#) holds otherwise, it is overruled.

The court rejected defendant’s assertion that based on this record, the delay was nevertheless improperly attributed to him because he personally objected. When counsel agrees to a continuance, that delay is attributable to defendant. Defendant noted that unlike 725 ILCS 103(a), section 103-5(e) does not expressly require a defense objection to preserve the right. But the court held that in this case, defense counsel affirmatively waived any speedy trial claims by agreeing to the continuance and new date.

[People v. Cross, 2022 IL 127907](#) On appeal from his conviction of first degree murder, defendant argued that he was not tried within 120 days of his arrest, thereby violating his statutory right to a speedy trial. In particular, defendant argued that the trial court erred when it attributed 34 days of delay to him based on his belated disclosure of an alibi defense, even though that disclosure did not move the pending trial date. The Court rejected that argument and held that a trial date need not be postponed for a delay to be attributed to a defendant.

At the time of his alibi disclosure, the matter had been pending for more than a year, and defendant’s trial was set for September 24, 2018. That date had been set when defendant announced ready for trial on July 16, 2018. The period from July 16 to September 24 was originally attributed to the State for purposes of calculating the speedy trial term. But, when the alibi disclosure was made on August 21, 2018, the trial judge decided that the 34-day period from August 21 to September 24 instead would be attributed to defendant. Subsequently, on September 24, the State sought a continuance due to scheduling problems for its experts; the trial was rescheduled to November 6, 2018. That date fell outside of the original speedy trial term, which would have run on October 27, 2018, had the court not changed the 34-day period from August 21 to September 24 from delay attributed to the State to delay attributed to defendant.

Defendant argued that the trial court erred in reallocating the 34-day period of delay to the defense because defendant's alibi disclosure did not cause the pending trial date to be rescheduled. The Supreme Court held that, while action by a defendant that causes a trial date to be rescheduled is one example of a delay occasioned by defendant, postponing a trial date is not *required* for a defendant's action to toll the statutory speedy trial term. A trial court's decision to attribute delay to a defendant is given great deference and is reviewed for an abuse of discretion. Here, the Court held that defendant's late disclosure of his alibi defense impacted the State's ability to present its case, even if it did not necessitate a continuance of the trial date. The trial judge properly recognized the impact of the late disclosure in attributing 34 days of delay to defendant, and thus there was no abuse of discretion.

The dissenting justice would have found error in the court's decision to change its attribution of 34 days of delay from the State to defendant. The State's actions on July 16 had already caused the delay to September 24, and defendant's alibi disclosure in the middle of that period did nothing to alter or increase the delay.

**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. 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. 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. 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. 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. 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.

### **Illinois Appellate Court**

**People v. Teen**, 2023 IL App (5th) 190456 The defendant’s speedy trial rights were not violated. Defendant failed to adequately object to continuances deemed “by agreement,” and because those continuances tolled the speedy trial clock, defendant was tried before the statutory deadline.

Defendant argued that he wasn’t present for the continuances, but that he sufficiently objected by demanding a speedy trial at his first appearance prior to arraignment, and by “filing” an objection via letter as soon as he learned of them. The appellate court found these arguments lacked support in the record. The record on appeal did not contain a transcript from the first appearance, and because the appellant has a duty to present a complete record, any doubts as to what occurred would be resolved against defendant. Nor did the record contain the letter in which defendant purported to lodge an objection to the continuances by agreement.

In finding these and defendant’s post-continuance objections inadequate to invoke his right to a speedy trial, the appellate court noted that “a defendant is bound by the actions of his attorney, unless the defendant clearly and convincingly asserts his right to discharge his attorney.” **People v. Kaczmarek**, 207 Ill. 2d 288, 297 (2003).

While defendant further argued that counsel was ineffective for misleading defendant into believing counsel would not request additional continuances, defendant could not show prejudice. The appellate court saw no reasonable probability of a different outcome had counsel informed defendant of his intent to continue the case, because even if he had done so, and defendant successfully objected, defendant could not show that the State would have failed to set a trial date by the speedy trial deadline. The appellate court found **People v. Mooney**, 2019 IL App (3d) 150607, which presumed prejudice in a similar situation, wrongly decided for basing its decision on speculation.

**People v. Cross**, 2021 IL App (4th) 190114 The trial court did not abuse its discretion when it attributed 34 days of pretrial “delay” to the defendant. In the middle of a continuance occasioned by the State, the defense supplemented its answer to discovery with a new alibi witness. The trial date remained set for about one month later. The State asked that the time between the last continuance and the trial date be attributed to the defense in light of the

amended answer. The trial court found that the time between the amended answer and the trial date would be attributed to the defense. The trial was later pushed back for unrelated reasons, such that, had the above delay been attributed to the State, 131 days of delay occasioned by the State would have passed prior to trial.

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**People v. Dyer, 2021 IL App (2d) 190187** The State accused defendant of using an Xbox video chat to remotely encourage underage boys to participate in sexual activity for his own sexual arousal. The initial indictment contained charges relating to sexual assault and solicitation. A superceding indictment included these same charges but added several charges of child pornography. Defendant alleged that delays attributable to him on the old charges did not apply to the new charges, and therefore sought their dismissal on speedy trial grounds.

The parties agreed that the new charges were subject to compulsory joinder, so the only issue on appeal was whether they constituted "new and additional" charges such that delays attributable to the defense on the original charges would not be attributable to the defense on the new charges. The Appellate Court held that, because both the new and old charges were based on the same conduct, the superceding indictment did not contain "new and additional" charges for purposes of speedy trial.

The court rejected defendant's claim that because some of the charges included in the initial indictment – the assault charges – were qualitatively different, the additional charges must be considered "new." It found no precedent in support of this argument, and held that courts must look to the indictments as a whole to determine whether defendant would have been adequately put on notice of new charges. Here, nothing about the new charges should have surprised defendant given the totality of the initial indictment, which alleged the same conduct.

**People v. Ingram, 2020 IL App (2d) 180353** Where defense counsel agreed to a continuance for trial to a date within the speedy trial term, the continuance was a delay attributable to defendant when subsequently determining whether defendant's speedy trial rights had been violated. While setting a mutually agreeable trial date within the speedy trial term has been held not to be a delay attributable to defendant in other cases, here defense counsel did not

simply acquiesce in a trial setting but instead agreed to a to a continuance, rendering the delay chargeable to defendant.

**People v. Jones**, 2018 IL App (1st) 151307 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.

**People v. Galloway**, 2014 IL App (1st) 123004 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.

The Appellate Court disagreed with defendant’s broad interpretation of what constitutes the set court date. 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.

**People v. Wade**, 2013 IL App (1st) 112547 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.

**People v. Brexton**, 2012 IL App (2d) 110606 Once the statutory speedy-trial 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.

**People v. Higgenbotham, 2012 IL App (1st) 110434** 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\(f\)](#).

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.

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).

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

**People v. Thompson, 2012 IL App (2d) 110396** 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.

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.

**[People v. Dennis, 2011 IL App \(5th\) 090346](#)** 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. 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 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.

**[People v. Minor, 2011 IL App \(1st\) 101097](#)** 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. Weddell**, 405 Ill.App.3d 424, 939 N.E.2d 504 (2d Dist. 2010) 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.

**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. 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. 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.

**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. 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. 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. 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.

## §46-7

### Delay Not Attributable to Defendant

#### Illinois Supreme Court

**People v. McKinstry**, 2022 IL App (3d) 180598 725 ILCS 5/103-5(c) provides that the State may obtain a continuance of the statutory speedy trial term for an additional 120 days where, “the State has exercised without success due diligence to obtain results of DNA testing” that is material to the case. In **People v. Swanson**, 322 Ill. App. 3d 339 (3d Dist. 2001), the court provided three requirements for demonstrating due diligence: (1) a full explanation by the State of every step taken to complete DNA testing within the 120-day term, (2) a showing that those steps, taken together, comprised a course of action that a reasonable and prudent person intent on completing testing within 120 days would follow, and (3) the State’s explanation as to why its efforts were unsuccessful and resulted in unavoidable delay.

Here, the State sought a 120-day continuance *after* having received the DNA results so that the prosecutor could “explore if there’s any other options.” The trial court granted that continuance as though it was a “mere formality,” over defense counsel’s assertion that she was ready to proceed to trial. This, in turn, led to further delays because defendant’s case had to be reassigned to a new public defender when defendant’s attorney was moved to a different division. Under these unique circumstances, the delay caused by the reassignment of the case within the public defender’s office was not attributed to the defense because that delay was caused by the court’s erroneous grant of the State’s motion to continue. That delay resulted in the State’s failure to bring defendant to trial within 120 days. Thus, the Appellate Court reversed defendant’s conviction outright.

**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. 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. 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.

### **Illinois Appellate Court**

**People v. Resser, 2023 IL App (3d) 210462** The trial court erred in denying defendant's motion to dismiss on speedy trial grounds. Following a single-vehicle accident, defendant had been charged with DUI in a uniform traffic citation. Where a defendant is charged via traffic citation, **Illinois Supreme Court Rule 505** applies and provides that, if not in custody, the defendant must file a speedy trial demand as provided in **725 ILCS 5/103-5**. That is, defendant must file a demand sufficient to put the State on notice that he is invoking his speedy trial right. Here, defendant filed a document titled, "appearance, plea of not guilty and jury demand." That document included the sentence, "defendant further demands a speedy trial by jury." This was sufficient to convey defendant's desire for a speedy trial in a clear and unambiguous manner, and thus satisfied **Rule 505** and Section 103-5(b).

And, the trial court erred in attributing to defendant a 411-day delay, from March 25, 2019, to May 10, 2020. On March 5, 2019, the court heard the State's motion *in limine*, and by March 25, 2019, the defendant had provided the court with information it had requested at that hearing. While the court did not issue its ruling until May 10, 2020, more than a year later, no further actions were required to be performed by either party with regard to that motion after March 25, 2019. Thus, it could not be said that defendant was responsible for the delay after that date.

Further, the court erroneously believed that defendant's motions *in limine* were also pending during that 411-day period. Defendant's motions had been ruled on in open court during a hearing on October 2, 2018, at which time trial had been set for October 22, 2018. That trial date was continued when, on October 16, 2018, the State filed its motion *in limine* that was the subject of the March 2019 hearing. A docket entry erroneously indicated that the March 2019 hearing date was for defendant's motions *in limine*, but a review of the record made clear that it was the State's motion that was at issue, not defendant's. Thus, the delay from March 25, 2019, to May 10, 2020, was caused by the State's filing of its motion *in limine* and the trial court's delay in ruling on that motion. Accordingly, the trial court abused its discretion in denying defendant's motion to dismiss on speedy trial grounds.

**People v. Hilliard, 2022 IL App (1st) 200744** At arraignment, defendant asked to proceed "in proper persona" [*sic*] three times and objected to his attorney's agreement to a continuance. The trial court overruled his requests. On the next court date, 29 days later, the trial court granted defendant's request to represent himself. Defendant persisted in his demand for a speedy trial, and by the time of trial the parties agreed the State occasioned 93 days of delay. Following his conviction, defendant appealed and argued a speedy trial violation because the 29 days between arraignment and the day his counsel withdrew should have been attributed to the State, meaning the State did not take him to trial within 120 days.

Defendant did not move to dismiss on speedy trial grounds below, and therefore forfeited the claim. But the majority found the error reviewable as second-prong plain error, citing **People v. Staake, 2017 IL 121755**. Significantly, the State in its brief asserted only that no error occurred, and therefore forfeited any argument as to second-prong plain error.

A defendant who makes a clear and unequivocal request for self-representation should be admonished and given the chance to make a knowing waiver of counsel. The State argued that defendant's request to proceed "in proper persona" was not a clear request, as defendant did not state that he wanted to proceed "*pro se*." The majority found this argument overly formalistic. It noted that "*in propria persona*" is a Latin phrase equivalent to "*pro se*," and therefore defendant's attempt at this phrase could be considered a clear and unequivocal request. Although the State and dissent pointed out that the trial court explicitly stated it did not understand what defendant meant, the majority found that in context it was clear defendant meant to represent himself.

Because defendant's initial request to represent himself was clear and unequivocal, neither counsel's agreement to a continuance, nor the 29 ensuing days, should have been attributed to him. The court reversed the conviction on speedy trial grounds.

**People v. Mooney, 2019 IL App (3d) 150607** Defense counsel rendered deficient performance by twice agreeing to toll the speedy trial term where neither continuance was factually attributable to defendant and counsel had announced ready for trial. On the first date, there were scheduling issues with a State witness, and on the second, the continuance was necessitated by the State's late disclosure of a video of defendant's arrest. Defendant was prejudiced because he was brought to trial outside of the speedy-trial period as a result of counsel's agreement to those continuances.

The Court acknowledged that a prejudice determination is somewhat speculative under these facts because it is impossible to know whether a speedy-trial motion to dismiss would have been granted or whether defendant would have been brought to trial within the term in the absence of counsel's agreement. To find no prejudice, however, would render counsel's actions essentially unreviewable.

**People v. Bauman, 2012 IL App (2d) 110544** 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*.

"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. The defendant's failure to appear on the status date waived only his right to object to the subpoena, not his speedy-trial demand.

"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.

**People v. Kohler, 2012 IL App (2d) 100513** “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'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.

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.

**Village of Mundelein v. Bogachev, 2011 IL App (2d) 100346** 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.

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.

**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. 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. 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."

**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. 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. 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. 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. 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. 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. 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. 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. 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. 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.

## §46-8

### Delay Prior to Retrials

#### Illinois Supreme Court

**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).

#### Illinois Appellate Court

**People v. Troia**, 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.

## §46-9

### Compulsory Joinder

#### Illinois Supreme Court

**People v. Hunter**, 2013 IL 114100 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.

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.

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.

**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.

**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. 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**, 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. 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).

### **Illinois Appellate Court**

**People v. Covalt**, 2025 IL App (5th) 220346 Defendant’s speedy trial rights were not violated because the additional charges of child pornography were separate acts from the initial charges and therefore not subject to compulsory joinder.

The State charged defendant with two counts of child pornography based on photographs found on his cell phone. Several months later, the State charged defendant with 25 additional counts of child pornography, also based on photographs and videos found on his cellphone. Defendant argued that his waiver of his right to a speedy trial, made as to the initial charges, did not apply to the latter charges.

The compulsory joinder statute requires all charges *based on the same act* be prosecuted in a single prosecution if the offenses were known to the prosecution and are within the jurisdiction of the same court. 720 ILCS 5/3-3(b). All charges subject to compulsory joinder are subject to the same speedy trial period, and the speedy trial period begins for all charges subject to compulsory joinder once the speedy trial demand is filed, even if the State files some charges at a later time.

Here, initial charges were filed in May of 2021, the additional charges were filed in December of 2021, and the trial began in April of 2022, 319 days after the initial indictment. Defendant agreed to waive speedy trial only as to the initial charges. However, his waiver covered the latter charges as well, because compulsory joinder applies only to charges based on the same act. Repeated violations of the child pornography statute, by taking multiple photos or videos, is a series of acts rather than a single act. Although defendant argued that

all of the acts occurred on two dates, with photos taken in close succession on each date, the appellate court clarified that closely related acts, even in a single incident, are not covered by the compulsory joinder rule. The court distinguished these multiple photos and videos from acts considered “continuous and uninterrupted,” such as possession of two different contraband.

**People v. McBroom, 2025 IL App (4th) 241044** Defendant was charged with several counts of predatory criminal sexual assault. Three of the counts alleged he committed the crimes by sexual contact or penetration, but did not allege the contact was for purposes of sexual arousal or gratification. After 120 days passed, the State filed an indictment alleging the three above charges were committed via contact for the purpose of sexual arousal or gratification. Defendant argued the indictment violated his right to a speedy trial because the indictment included “new and additional” charges that were subject to compulsory joinder. The court denied the motion. Defendant was convicted on all counts.

On appeal, defendant argued he was deprived of his statutory right to a speedy trial. The appellate court affirmed. When later-filed charges are subject to compulsory joinder with the original charges, the time in which trial is to begin on the new and additional charges is subject to the same statutory limitation that is applied to the original charges. Any continuances obtained in connection with the original charges cannot be attributed to the defendant with respect to the new and additional charges. This rule applies only when the new charges are subject to compulsory joinder. The purpose of the rule is to prevent trial by ambush, where defendants may agree to pretrial delays on pending charges, while the State prepares for a trial on more serious, not-yet-pending charges. The question is whether the original charge provided sufficient notice of the new charge.

In this case, defendant was charged in all counts with violating [720 ILCS 5/11-1.40\(a\)\(1\)](#). The only difference between the charges was the theory of culpability – the original charges alleged assault via penetration or contact, while the new charges alleged contact for purposes of sexual arousal or gratification. Not every variance in elements or penalties between the original and subsequent charges automatically renders the latter “new and additional” charges. Defendant always knew the conduct he was defending against was a form of sexual contact or penetration that was not accidental, unintentional, or for a proper purpose. That same conduct was at issue in the subsequent charges, which merely clarified or added the theory of culpability that the contact was for purposes of sexual arousal or gratification. Thus, the original charges provided sufficient notice to defendant of the subsequent charges.

**People v. Sundell, 2025 IL App (2d) 240490** On May 22, 2021, defendant was charged by complaint with heroin possession. On August 5, 2021, the substance was reported to have tested positive for fentanyl. On August 27, 2021, defendant was indicted for heroin possession. On December 13, 2022, defendant filed a demand for a speedy trial. On October 4, 2023, the State filed a new indictment, charging defendant with fentanyl possession. Defendant moved to dismiss the indictment, arguing it was subject to compulsory joinder, but was filed more than 160 days after defendant filed his demand for a speedy trial on the initial indictment. The trial court agreed and dismissed the indictment.

The appellate court reversed, holding defendant’s failure to appear in court on several dates waived his speedy trial rights. Subsection (b) of the speedy-trial act states: “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\(b\)](#). In **People v.**

**Patterson**, 392 Ill. App. 3d 461 (2009), the court found defendant’s absences during and after the speedy trial term constituted a waiver of all speedy trial rights. Defendant argued that **Patterson** is distinguishable, because here, defendant’s failures to appear all occurred after the 160-day term had expired. However, **Patterson** explicitly rejected this argument, stating: “Section 103-5(b) says nothing to indicate that a waiver can occur only before the speedy-trial period has run. Indeed, the running of the period means only that a defendant can enforce his or her demand; it does not mean that he or she cannot waive it.” This holding is supported by the provision’s language that “any” missed court date will waive the demand.

**People v. Resor**, 2024 IL App (4th) 230208 Defense counsel rendered ineffective assistance where he failed to assert that defendant’s speedy trial rights were violated with regard to later-filed charges. Defendant was initially charged with aggravated domestic battery on March 21, 2022. The State subsequently added two charges of aggravated battery on September 19, 2022, and defendant’s trial began on October 11, 2022, more than 200 days after he was first arrested and charged.

Under 725 ILCS 5/103-5(a), a defendant must be tried within 120 days of being taken into custody, less any delays attributable to him. Where later-filed charges are subject to compulsory joinder with the original charge, however, any continuances attributed to defendant on the original charge cannot be attributed to him on the new charges because those charges were not before the court when the continuances were obtained. Charges are subject to compulsory joinder where they are known to the proper prosecuting officer at the time of commencing the prosecution and where they are based on the same act. 720 ILCS 5/3-3(b).

Here, the court found that the subsequent aggravated battery charges were subject to compulsory joinder. Both the police report and the arresting body camera video showed that all of the facts necessary to support the additional charges were made known to the State when the first charge was filed or immediately thereafter. And, while the initial charge alleged strangling and the subsequent charges alleged two acts of shoving or pushing the victim into a building and a nearby pole, there was but a single, continuous and uninterrupted act of battery here, thus the charges were sufficiently based on the same act as to require simultaneous prosecution under compulsory joinder principles. There was no dispute that defendant was not tried on the new charges within 120 days of his original arrest. Accordingly, his right to speedy trial was violated as to the later-filed charges, and counsel rendered ineffective assistance by not moving to dismiss those charges on that basis. The appellate court vacated defendant’s convictions and sentences on counts 2 and 3.

**People v. Nielsen**, 2024 IL App (1st) 221809 The compulsory joinder statute provides, in part, that where several offenses are “known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction fo a single court, they must be prosecuted in a single prosecution...if they are based on the same act.” 720 ILCS 5/3-3(b). Defendant argued that this provision required dismissal of charges of attempt murder and aggravated battery which were based on the same conduct as a reckless driving charge to which he had already pled guilty.

The appellate court disagreed, relying on **People v. Jackson**, 118 Ill. 2d 179 (1987). In **Jackson**, the court held that when the State charges a defendant with a felony after a police officer issues a traffic citation, compulsory joinder does not bar the felony prosecution. Here, defendant was originally charged with reckless driving via uniform traffic citation. Two days later, the State’s Attorney filed a complaint bringing felony charges of attempt murder

and aggravated battery. These facts fit squarely within **Jackson**'s holding, and thus the later-filed felony charges could proceed.

The court rejected defendant's argument that compulsory joinder should apply because the record here established that the State's Attorney knew of all charges and the facts underlying those charges at the time the traffic citation was filed. Under **Jackson**, the timing of when the State's Attorney became aware of the facts underlying the various charges is not determinative. Rather, it is the use of a traffic citation to bring the initial charges which precludes application of compulsory joinder because the separately-filed felony charges could not be brought via the citation.

**People v. Keys, 2023 IL App (4th) 210630** Under the compulsory joinder statute [720 ILCS 5/3-3(b)], the State must bring multiple charges in a single prosecution where: (1) the several charges are known to the proper prosecuting authority at the time of commencing the prosecution, (2) the charges are within the jurisdiction of a single court, and (3) the charges are based on the same act. The speedy trial period runs on all of the charges that are subject to compulsory joinder, including those charges which may not be filed until some later date. And, delays in the speedy trial term attributable to defendant on the original charges are not attributable to defendant on any new charges subject to compulsory joinder.

Here, defendant was charged with first degree murder and concealment of a homicidal death in 2017, and with dismembering a human body and concealment of a homicidal death in 2019. All of the charges related to the death of his girlfriend. On appeal, defendant argued that the 2019 charges were subject to compulsory joinder and thus had to be dismissed on speedy trial grounds where they were not brought until after the speedy trial term had expired. The appellate court disagreed.

First, the court held that the prosecution was commenced with the filing of the original information on October 31, 2017, rather than at the time defendant waived preliminary hearing on November 16, 2017. Under 720 ILCS 5/2-16, prosecution is defined as "commencing with...the issuance of the information." While 725 ILCS 5/111-2(a) provides that a prosecution may not be "pursued" by information without a preliminary hearing being held or waived, that section does not impact the date on which the prosecution is commenced. Thus, the compulsory joinder analysis was concerned with what was known to the State on October 31, 2017. Notably, on that date, the State did not yet have information about the cause of death, that the victim's remains had been dismembered and burned, or details about when and how defendant had moved, burned, and dismembered the remains.

As to the later-filed concealment charge, the court concluded that it was not subject to compulsory joinder because the 2019 charge was based on discrete acts occurring on separate dates from the 2017 concealment charge. Specifically, the 2017 charge alleged that on October 22, 2017, defendant transported the victim's body from the place of her death and hid or otherwise disposed of her remains, and the 2019 charge alleged that defendant, on or about October 23 to 26, 2017, knowingly concealed the victim's death by moving her body to yet another location and, on or about October 27-29, concealed the victim's death by placing her body in a bag in vehicle. Similarly, the 2019 dismemberment charge was predicated on separate acts from the concealment in that dismemberment specifically requires "severing, dissection, or mutilation of a deceased body," and thus the dismemberment charge was not subject to compulsory joinder with the 2017 concealment charge.

**People v. Luciano, 2023 IL App (2d) 220112** In 1990, Albert Gonzalez was shot and killed. Defendant was charged by separate indictments filed in 1990 and 1991 with unlawful possession of weapons by a felon and solicitation to commit aggravated discharge of a firearm.

Those charges related to the shooting incident that resulted in Gonzalez's death and the firearms that were used. Defendant pled guilty in 1991. Subsequently, in 2007, defendant was charged with Gonzalez's murder and was convicted at a bench trial. His conviction was affirmed on direct appeal over a challenge to the sufficiency of the evidence. In 2011, defendant filed a post-conviction petition alleging ineffective assistance of trial counsel for not filing a motion to dismiss the murder case based on compulsory joinder and ineffective assistance of appellate counsel for not raising compulsory joinder on direct appeal.

The compulsory-joinder statute, [720 ILCS 5/3-3\(b\)](#), provides that if multiple offenses are known to the State at the time of commencing prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution. Here, the State had the requisite knowledge to charge defendant with murder no later than 1991, when it obtained the indictment which included the solicitation to commit aggravated discharge count. Specifically, the State had evidence that defendant had instructed several fellow gang members to shoot Gonzalez, had provided the weapons that were used, and had collected those weapons after the shooting. Indeed, this evidence formed the basis for both the 1990 and 1991 charges and the 2007 charge. Thus, the murder charge was based on the same act as the earlier charges and was subject to compulsory joinder.

Under [People v. Williams](#), 94 Ill. App. 3d 241 (1981), where a subsequent charge is subject to compulsory joinder with an earlier charge, the speedy trial term on the subsequent charge begins to run at the time the original charge was initiated. Here, approximately 16 years elapsed between the bringing of the initial and subsequent charges, and thus the murder charge was subject to dismissal on speedy trial grounds. Had counsel brought a motion to dismiss on that basis, it would have been successful. And, there was no strategic reason for counsel not to file a motion to dismiss. Accordingly, defendant received ineffective assistance of trial counsel and, by extension, appellate counsel. The appropriate remedy is to reverse and vacate defendant's 2007 murder conviction.

[People v. McBride](#), 2022 IL App (4th) 220301 In August 2020, defendant was charged with various offenses arising out of a motor vehicle accident which resulted in the deaths of four people in another vehicle. Included were four counts of reckless homicide. Subsequently, in January 2022, the State charged defendant with aggravated DUI, alleging that defendant operated her vehicle while under the influence of THC and two or more people died in the accident.

Defendant moved to dismiss the additional count on speedy trial grounds, asserting that it was subject to compulsory joinder. Defendant noted that police reports demonstrated that she showed signs of being under the influence at the accident scene, she admitted smoking cannabis shortly before the accident, and she said "yes" when an officer asked if she was under the influence of cannabis while driving. And, an officer wrote a citation for aggravated DUI on the date of the accident, though the prosecutor ultimately did not file it at that time. The State noted that defendant's initial hospital drug screen was negative, and a lab report showing the presence of THC in defendant's system was not received until more than six months later. Thus, the State argued that it lacked the requisite knowledge for compulsory joinder. The circuit court agreed with defendant and dismissed the aggravated DUI charge.

The appellate court affirmed. Initially, the court noted that there was ambiguity as to whether the initial hospital drug screen tested for THC. The hospital report was not admitted into evidence at the hearing, and the testimony was only that the drug screening was negative, without specifying what substances were tested. Further, the record contained a law enforcement sworn report indicating that defendant tested positive for THC on the night

of the accident, pursuant to [625 ILCS 5/11-501.2](#), supporting the conclusion that the State had knowledge of defendant's positive results in August 2020.

The court concluded that the trial judge did not err in finding that the offense of aggravated DUI was known to the proper prosecuting officer at the time of commencing the prosecution. Here, even without positive test results from the hospital, the officers' suspicions that defendant was under the influence of something were corroborated by her inculpatory statements to the police at the scene. This was sufficient to establish the requisite knowledge for compulsory joinder. Under [People v. Williams, 204 Ill. 2d 191 \(2003\)](#), the delays attributable to defendant on the original charges were not attributable to her on the later-added DUI charge, and thus that charge was subject to dismissal on speedy trial grounds.

[People v. Redmon, 2022 IL App \(3d\) 190167](#) One of defendant's convictions of predatory criminal sexual assault of a child was reversed outright based on speedy trial and compulsory joinder principles. While certain pretrial delays were attributable to defendant on the original charges, those delays did not toll the speedy trial term as to the subsequently-added PCSA charge. The subsequent PCSA charge was based upon the same act as was charged in one of the original counts and thus was subject to compulsory joinder. Because compulsory joinder applied, it could not be assumed that the delays agreed to by defendant before the charge was filed would have been agreed to by defendant had the additional charge been pending at the time of those delays.

Defendant's conviction for permitting the sexual abuse of a child also was reversed outright where the State failed to comply with the charging requirements of the statute. [720 ILCS 5/11-9.1A\(f\)](#) provides that "[a] person may not be charged with the offense of permitting sexual abuse of a child...until the person who committed the offense is charged with" one of the enumerated sexual offenses. The plain language of the statute requires that the individual who allegedly committed the sexual abuse must be charged in order for the defendant to be charged with permitting the abuse. And, here, the State did not charge the person who committed the alleged abuse at issue.

Finally, defendant's remaining conviction of predatory criminal sexual assault of a child was reversed and remanded for a new trial. The Appellate Court agreed with defendant that she was deprived of a fair trial by the inclusion of the aforementioned charges, both of which should have been dismissed prior to trial. Certain evidence, including 115-10 statements, would not have been admissible had those charges been dismissed. Without that evidence, the State's case on the remaining charge would have been significantly weakened. Accordingly, due process and fundamental fairness required reversal and remand for a new trial.

[People v. Delhaye, 2021 IL App \(2d\) 190271](#) The State charged defendant with felony and misdemeanor charges for aggravated unlawful use of an electronic communication device. Defendant had previously pled guilty to a traffic citation issued for the same incident. The subsequent charges were not subject to compulsory joinder.

Defendant rear-ended a stopped vehicle, killing one passenger and seriously injuring the driver. He was issued a traffic citation at the scene for failing to reduce speed to avoid an accident. He also turned over his cell phone to the police. After pleading guilty to the citation, the State brought subsequent charges for both misdemeanor and felony aggravated unlawful use of an electronic communication device. Based on forensic analysis of defendant's phone, including the retrieval of deleted text messages, combined with expert reconstruction of the accident, and eyewitness accounts, the State alleged that defendant struck the stopped car

at a speed of 65 mph while engaged in a text conversation with his girlfriend. He was found guilty of the subsequent charges and sentenced to 180 days in jail and 36 months' probation.

If the subsequent charges were subject to compulsory joinder, they would have been filed outside the speedy trial window that began with the citation. The appellate court held that they were not subject to compulsory joinder under 720 ILCS 5/3-3(b). In **People v. Jackson**, 118 Ill. 2d 179 (1987), the Supreme Court held that compulsory joinder does not apply to felony charges filed after a traffic citation. The court found that the legislature did not intend "that a driver could plead guilty to a traffic offense on a traffic ticket issued by a police officer and thereby avoid prosecution of a serious offense brought by the State's Attorney." The court reasoned that under 3-3(b), a police officer is not a "proper prosecuting officer" for the subsequent charges, as only the State may bring felony charges. Moreover, section 3-3(b) requires that the subsequent charges be known to the prosecuting authority at the time of the initial charges.

Here, while defendant provided his cell phone to the police on the day of the accident, he had already deleted the information showing that he was texting around the time of the accident. It took weeks to retrieve the texts, and additional time, including time after the guilty plea, to perform the accident reconstruction analysis. Thus, the State would not have known the facts which formed the basis for the subsequent charges at the time of the citation.

The State also proved the crime beyond a reasonable doubt. The defendant argued that while the evidence showed defendant had been texting back and forth for several minutes prior to the crash, the State could not prove that he was actually reading or composing a text at the exact moment of the crash. However, the court noted that the statute had been expanded to bar any use of the device, not just reading or sending texts, and that this unlawful use is aggravated when coupled with the causation of injury or death. Based on the circumstantial evidence, including the fact that texts were sent and received within seconds of the estimated time of the accident, and the fact that defendant never slowed down, suggesting he was not looking at the road, a rational trier of fact could have found defendant's use of his phone proximately caused the accident.

**People v. Dyer**, 2021 IL App (2d) 190187 The State accused defendant of using an Xbox video chat to remotely encourage underage boys to participate in sexual activity for his own sexual arousal. The initial indictment contained charges relating to sexual assault and solicitation. A superceding indictment included these same charges but added several charges of child pornography. Defendant alleged that delays attributable to him on the old charges did not apply to the new charges, and therefore sought their dismissal on speedy trial grounds.

The parties agreed that the new charges were subject to compulsory joinder, so the only issue on appeal was whether they constituted "new and additional" charges such that delays attributable to the defense on the original charges would not be attributable to the defense on the new charges. The Appellate Court held that, because both the new and old charges were based on the same conduct, the superceding indictment did not contain "new and additional" charges for purposes of speedy trial

The court rejected defendant's claim that because some of the charges included in the initial indictment – the assault charges – were qualitatively different, the additional charges must be considered "new." It found no precedent in support of this argument, and held that courts must look to the indictments as a whole to determine whether defendant would have been adequately put on notice of new charges. Here, nothing about the new charges should have surprised defendant given the totality of the initial indictment, which alleged the same conduct.

**People v. Isbell, 2020 IL App (3d) 180279** Where additional charges arise from the same facts as the original charges, and the State had knowledge of those facts at the commencement of prosecution, the speedy trial term for the new charges is the same as that applied to the original charges. Continuances obtained in connection with the original charges cannot be attributed to the defense on the new charges because those new charges were not before the court at the time.

Here, defendant was originally charged with two counts of domestic battery based on insulting or provoking physical contact. Subsequently, a third count of domestic battery was added based on bodily harm. The new count also alleged different conduct than the first two counts. Because the new charge alleged both new elements and new conduct, it was a new and additional charge for purposes of the speedy trial analysis. Defendant was not brought to trial on that count until well outside of the speedy trial period where the new count was not added until more than a year after the original charges were filed. None of the continuances on the original charges could be attributed to defendant on the new charge. A motion to dismiss that charge would have been meritorious, and therefore trial counsel was ineffective for not bringing such a motion. Accordingly, defendant's conviction on the additional domestic battery charge was reversed outright.

**People v. Rogers, 2020 IL App (3d) 180088** Defense counsel was ineffective for failing to move for dismissal of a later-brought DUI charge on speedy trial grounds. Defendant was initially charged by citation with DUI under (a)(4). Prosecutor added (a)(6) DUI charge 114 days later. The Appellate Court concluded that the officer could have filed both charges initially; both were based on suspicion that defendant had consumed drugs. While the initial charge was brought by traffic citation, the additional DUI charge also could have been charged via the citation because both were misdemeanors. **People v. Jackson, 118 Ill. 2d 179 (1987)**, which declined to apply compulsory joinder to a later-filed felony after the initial misdemeanor charge was brought by citation, was distinguished.

Coupled with the original 114-day delay, a subsequent continuance was counted against the State and resulted in defendant being tried outside of the speedy trial term. Accordingly, had counsel moved for dismissal of the (a)(6) charge, such a motion would have been granted. The Appellate Court vacated defendant's conviction under **625 ILCS 5/11-501(a)(6)**.

**People v. Moffett, 2019 IL App (2d) 180964** State appealed the trial court's dismissal of insulting-or-provoking aggravated battery charge on speedy trial grounds where that charge was added after defendant had agreed to continuances while only the original bodily-harm aggravated battery charge was pending.

Whether delay attributable to defendant on an original charge is also attributable to defendant on a subsequent charge depends on whether the subsequent charge is a "new and additional charge" under the rule set out in **People v. Williams, 204 Ill. 2d 191 (2003)**. Here, while the subsequent charge added the element of insulting or provoking contact, it was not a new and additional charge because the underlying conduct was the same, the potential penalty is the same, and the original charge gave adequate notice to allow defendant to prepare for trial on both counts. Accordingly, the delay attributable to defendant on the original charge was also attributable on the subsequent charge, and there was no speedy trial violation.

**People v. Gonzalez, 2019 IL App (1st) 152760** The State indicted defendant on multiple counts of criminal sexual assault against A.B. based on digital penetration, and sexual exploitation of A.B. and E.S. based on persuading the underage girls to remove their clothes. Two years later it re-indicted defendant, now alleging sexual assault against both victims. If compulsory joinder applied to the charges of sexual assault against E.S., those charges would violate defendant's speedy trial rights. However, the Appellate Court held it did not. Compulsory joinder applies only when the new charges are predicated on the same act as the original charges. Here, even though all alleged acts occurred at the same place and time, the original charges alleged sexual assault only against A.B., and the acts alleged in the new sexual assault charge – digital penetration of E.S. - differed from the acts alleged in the original exploitation charge.

**People v. Dalton, 2017 IL App (3d) 150213** 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.

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.

**People v. Sykes, 2017 IL App (1st) 150023** 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 officer'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.

**People v. Staake, 2016 IL App (4th) 140638** 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.

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.

[People v. Moody](#), 2015 IL App (1st) 130071 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](#).

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 victim died from extensive blunt-force trauma and extensive burns.

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 State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. 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.

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.

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.

**People v. Larue, 2014 IL App (4th) 120595** 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). 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.

**People v. Thomas, 2014 IL App (2d) 130660** 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).

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.

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. Dismuke, 2013 IL App \(2d\) 120925](#) 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.

**People v. Mays, 2012 IL App (4th) 090840** 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.

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.

**People v. Kazenko, 2012 IL App (3d) 110529** 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.

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)**. 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.

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.

**People v. Wells, 2012 IL App (1st) 083660** 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. 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.

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.

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 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. Defendant could not have been surprised by the subsequent charges because they were essentially the same as the original charges.

**People v. Shipp, 2011 IL App (2d) 100197** 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.

**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.

**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.

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