

1 S.178

2 Introduced by Senator Hashim

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedure; speedy trial

6 Statement of purpose of bill as introduced: This bill proposes to permit a  
7 defendant to file a motion to dismiss a criminal prosecution if the trial does not  
8 commence within one year after the defendant is charged with a misdemeanor  
9 or within two years after the defendant is charged with a felony.

10 An act relating to speedy trial procedures in criminal cases

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 13 V.S.A. § 6506 is added to read:

13 § 6506. SPEEDY TRIAL STANDARDS

14 (a)(1) A defendant charged with a nonviolent misdemeanor may move for  
15 dismissal if the trial has not commenced within one year after the charge was  
16 filed.

17 (2) A defendant charged with a nonviolent felony may move for  
18 dismissal if the trial has not commenced within two years after the charge was  
19 filed.

1       (b)(1) The prosecutor shall respond to a motion filed pursuant to subsection  
2       (a) of this section within 14 days, and the court may set the matter for hearing.  
3       The response shall explain why the trial did not commence within the time  
4       period required by subsection (a) of this section, and may refer to any of the  
5       following factors:  
6               (A) the seriousness and circumstances of the charged offense;  
7               (B) the extent of harm resulting from the offense;  
8               (C) the evidence of guilt and its admissibility at trial;  
9               (D) the likelihood of new or additional evidence at trial or retrial;  
10              (E) the defendant's history, character, and condition;  
11              (F) the length of any pretrial incarceration or any incarceration for  
12       related or similar offenses;  
13              (G) the purpose and effect of imposing a sentence authorized by the  
14       offense;  
15              (H) the impact of dismissal on public confidence in the judicial  
16       system or on the safety and welfare of the community in the event the  
17       defendant is guilty;  
18              (I) the existence of any misconduct by law enforcement personnel in  
19       the investigation, arrest, or prosecution of the defendant;  
20              (J) the existence of any prejudice to defendant as the result of the  
21       passage of time;

1           (K) the attitude of the complainant or victim with respect to dismissal  
2           of the case; and

3           (L) any other relevant fact indicating that judgment of conviction  
4           would serve no useful purpose.

5           (2) If the prosecutor does not file a response within 14 days to a motion  
6           filed pursuant to subsection (a) of this section, the court may dismiss the case  
7           with prejudice.

8           (c) For purposes of this section, the following periods shall be excluded  
9           when computing the time within which the trial of any offense must  
10           commence:

11           (1) Any period of delay resulting from other proceedings concerning the  
12           defendant, including:

13           (A) delay resulting from an examination of the defendant and hearing  
14           on the defendant's mental competency or physical incapacity;

15           (B) delay resulting from a stay of the proceedings due to an  
16           examination or treatment of the defendant pursuant to chapter 157 of this title;

17           (C) delay resulting from a trial with respect to other charges against  
18           the defendant, which period shall run from the commencement of the other  
19           trial until 14 days after an acquittal or imposition of sentence;

20           (D) delay resulting from interlocutory appeals;

21           (E) delay resulting from hearings on pretrial motions;

1           (F) delay resulting from proceedings relating to transfer to or from  
2           another divisions of the superior court; or

3           (G) delay reasonably attributable to any period, not to exceed 30  
4           days, during which any proceeding concerning the defendant is actually under  
5           advisement.

6           (2) Any period of delay resulting from the absence or unavailability of  
7           the defendant or an essential witness. A defendant or an essential witness shall  
8           be considered absent when the person's whereabouts are unknown and the  
9           person is attempting to avoid apprehension or prosecution or when the person's  
10          whereabouts cannot be determined by due diligence. A defendant or an  
11          essential witness shall be considered unavailable whenever the person's  
12          whereabouts are known but the person's presence for trial cannot be obtained  
13          by due diligence or the person resists appearing at or being returned for trial.

14          (3) Any period of delay resulting from the fact that the defendant is  
15          mentally incompetent or physically unable to stand trial.

16          (4) If the complaint or indictment is dismissed by the prosecution and  
17          subsequently a charge is filed against the defendant for the same or a related  
18          offense, any period of delay from the date the charge was dismissed to the date  
19          the limitations period would commence to run as to the subsequent charge.

1           (5) A reasonable period of delay when the defendant is joined for trial  
2           with a codefendant as to whom the time for trial has not run and there is no  
3           cause for granting a severance.

4           (6) Any period of delay resulting from the court granting a continuance,  
5           if the court granted the continuance on the basis of findings that the ends of  
6           justice served by taking such action outweighed the best interests of the public  
7           and the defendant in a speedy trial. No period of delay resulting from a  
8           continuance granted by the court in accordance with this paragraph shall be  
9           excludable under this subdivision unless the judge sets forth in the record of  
10           the case, either orally or in writing, the reasons for finding that the ends of  
11           justice served by the granting of the continuance outweigh the best interests of  
12           the public and the defendant in a speedy trial.

13           (7) Any period of time between the day on which a defendant or the  
14           defendant's counsel and the prosecuting attorney agree in writing that the  
15           defendant will plead guilty or nolo contendere to the charges and such time as  
16           the judge accepts or rejects the plea arrangement.

17           (8) Any period of time between the day on which the defendant enters a  
18           plea of guilty and the day on which an order of the court permitting the  
19           withdrawal of the plea becomes final.

20           Sec. 2. EFFECTIVE DATE

21           This act shall take effect on passage.