

**RULE 3.134. TIME FOR FILING FORMAL CHARGES**

**(a) Custody Defendants.** The state shall file a formal charge on a defendant in custody by information, or indictment, or in the case of an alleged non-felony criminal offense by whatever document constitutes a formal charge, within 30 days from the date on which the defendant is arrested or from the date of the service of a *capias* upon the defendant. If the defendant remains uncharged, the court on the 30th day and with notice to the state shall:

(1) Order that the defendant automatically be released on his or her own recognizance on the 33rd day unless the state files a formal charge by that date; or

(2) If good cause is shown by the state, order that the defendants automatically be released on his or her own recognizance on the 40th day unless the state files a formal charge by that date.

In no event shall any defendant remain in custody beyond 40 days unless the defendant has been formally charged with a crime.

**(b) Non-custody Defendants.** If the state has not filed a formal charge within 60 days from the date of arrest, the defendant may move the court to remove conditions of pretrial release other than the requirement to appear in court and other mandatory requirements imposed by statute. The motion shall be granted unless the judge finds the state has established good cause for the delay in filing a formal charge.

RECEIVED, 09/19/2019 09:11:30 PM, Clerk, Supreme Court

### **RULE 3.191.      SPEEDY TRIAL**

**(a) Speedy Trial without Demand.** Except as otherwise provided by this rule, every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a non-felony offense, or within 160 days of arrest or date of the filing of an indictment or information, whichever occurs later, if the crime charged is a felony. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p). The time periods established by this subdivision with respect to arrest shall commence when the person is taken into custody as defined under subdivision (d).-

**(b) Speedy Trial upon Demand.** Except as otherwise provided by this rule, every person charged with a felony by indictment or information or charged with a non-felony criminal offense shall have the right to demand a trial within 60 days, by filing a separate pleading entitled “Demand for Speedy Trial,” and serving a copy on the prosecuting attorney and the presiding judge. In the case of non-felony criminal offenses, this right shall commence from arrest, notice to appear, or other formal charge.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall hold a calendar call, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the calendar call the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the calendar call.

(3) The failure of the court to hold a calendar call on a demand that has been properly filed and served shall not interrupt the running of any time periods under this subdivision.

(4) If the defendant has not been brought to trial within 50 days of the filing of the demand, the defendant shall have the right to the appropriate remedy as set forth in subdivision (p).

**(c) Commencement of Trial.** A person shall be considered to have been brought to trial if the trial commences within the time herein provided. The trial is considered to have commenced when the trial jury panel for that specific trial is

sworn for voir dire examination or, on waiver of a jury trial, when the trial proceedings begin before the judge.

**(d) Custody.** For purposes of this rule, a person is taken into custody:

(1) when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged; or

(2) when the person is served with a notice to appear in lieu of physical arrest that requires the defendant to appear in court at a specified date and time.

**(e) Prisoners outside Jurisdiction.** A person in custody in another jurisdiction is not entitled to the benefit of this rule until:

(1) that person returns to the physical jurisdiction of the court within which the Florida charge is pending;

(2) written notice of the person's return is filed with the court and served on the prosecuting attorney; and

(3) as to felony offenses, an indictment or information has been filed; or as to non-felony criminal offenses, an arrest has occurred.

For these persons, the time period under subdivision (a) commences on the date the last act required under this subdivision occurs. For these persons, the time period under subdivision (b) commences when the demand is filed so long as the acts required under this subdivision occur before the filing of the demand. If the acts required under this subdivision do not precede the filing of the demand, the demand is invalid and shall be stricken upon motion of the prosecuting attorney.- "In custody in another jurisdiction" shall include in federal custody, in the custody of another state, or in custody in another county in Florida based on actively pending charges other than the instant charges.

**(f) Consolidation of Felony and Non-felony Criminal Offense.** When a felony and a non-felony criminal offense are consolidated for disposition in circuit court, the non-felony criminal offense shall be governed by the same time period applicable to the felony.

**(g) Demand for Speedy Trial; Accused Is Bound.** A demand for speedy trial binds the accused and the state. No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be provided. A demand for speedy trial shall be considered a pleading that the accused is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within 5 days. A demand filed by an accused who has not diligently investigated the case or who is not timely prepared for trial shall be stricken as invalid on motion of the prosecuting attorney. A demand may not be withdrawn by the accused except on order of the court, with consent of the state or on good cause shown. Good cause for continuances or delay on behalf of the accused thereafter shall not include nonreadiness for trial, except as to matters that may arise after the demand for trial is filed and that reasonably could not have been anticipated by the accused or counsel for the accused. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this rule.

**(h) Notice of Expiration of Time for Speedy Trial; When Timely.** A notice of expiration of speedy trial time shall be timely if filed and served on the prosecuting attorney and the presiding judge after the expiration of the periods of time for trial provided in this rule. However, a notice of expiration of speedy trial time filed before expiration of the period of time for trial is invalid and shall be stricken on motion of the prosecuting attorney.

**(i) When Time Periods May Be Extended.** The periods of time established by this rule, including the recapture period set forth in subdivision (p), may be extended, provided the period of time sought to be extended has not expired at the time the extension was procured. An extension may be procured by:

- (1) stipulation, announced to the court or signed in proper person or by counsel, by the party against whom the stipulation is sought to be enforced;
- (2) written or recorded order of the court on the court's own motion or motion by either party in exceptional circumstances as hereafter defined in subdivision (l);
- (3) written or recorded order of the court with good cause shown by the accused;
- (4) written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including but not limited to an

examination and hearing to determine the mental competency or physical ability of the defendant to stand trial, for hearings on pretrial motions, for appeals by the state, for DNA testing ordered on the defendant's behalf upon defendant's motion specifying the physical evidence to be tested pursuant to section 925.12(2), Florida Statutes, and for trial of other pending criminal charges against the accused; or

(5) administrative order issued by the chief justice, under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), suspending the speedy trial procedures as stated therein.

**(j) Delay and Continuances.** If trial of the accused does not commence within the periods of time established by this rule, the defendant shall be entitled to invoke the provisions of subdivision (p) unless it is shown that:

(1) a time extension has been ordered under subdivision (i) and that extension has not expired;

(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;

(3) the accused was unavailable for trial under subdivision (k);

(4) the demand referred to in subdivision (g) is invalid; or

(5) the accused has waived the right to a speedy trial under this rule. Unless otherwise ordered by the court, an accused's request for a continuance, if granted, or the agreement by an accused to set the trial beyond the time periods of this rule, shall act as a waiver of the accused's speedy trial rights under subdivision (a).

**(k) Availability for Trial.** A person is unavailable for trial if the person or the person's counsel fails to attend a proceeding at which either's presence is required by these rules, or the person or counsel is not ready for trial on the date trial is scheduled. A person who has not been available for trial during the term provided for in this rule is not entitled to be discharged. No presumption of nonavailability attaches, but if the state objects to discharge and presents any evidence tending to show nonavailability, the accused must establish, by competent proof, availability during the term.

**(l) Exceptional Circumstances.** As permitted by subdivision (i) of this rule, the court may order an extension of the time periods provided under this rule when exceptional circumstances are shown to exist. Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that, as a matter of substantial justice to the accused or the state or both, require an order by the court. These circumstances include:

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

(2) a showing by the state that the case is so unusual and so complex, because of the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(3) a showing by the state that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time;

(4) a showing by the accused or the state of necessity for delay grounded on developments that could not have been anticipated and that materially will affect the trial;

(5) a showing that a delay is necessary to accommodate a codefendant, when there is reason not to sever the cases to proceed promptly with trial of the defendant; or

(6) a showing by the state that the accused has caused major delay or disruption of preparation of proceedings, as by preventing the attendance of witnesses or otherwise.

**(m) Effect of Mistrial; Appeal; Order of New Trial.** A person who is to be tried again or whose trial has been delayed by an appeal by the state or the defendant shall be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial court granting a new trial, the date of an order by the trial court granting a motion in arrest of judgment, or the date of receipt by the trial court of a mandate, order, or notice of whatever form

from a reviewing court that makes possible a new trial for the defendant, whichever is last in time. If a defendant is not brought to trial within the prescribed time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p).

**(n) Discharge from Crime; Effect.** All persons seeking discharge under this rule must file a Notice of Expiration of Speedy Trial Time. The recapture period as provided in subsection (p) shall apply to all persons seeking discharge under this rule. The state is not precluded from filing charges until a motion for discharge has been granted. Discharge from a crime under this rule shall operate to bar prosecution of the crime charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense.

**(o) Nolle Prosequi; Effect.** The intent and effect of this rule shall not be avoided by the state by entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode, whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi. The defendant must invoke the remedy provisions of subdivision (p) whether or not the pending charge is suspended, continued, or is the subject of a nolle prosequi. This subdivision does not authorize the discharge of the defendant from the crime or any other remedy beyond those set forth in subdivision (p). The clerk shall accept and treat all pleadings as filed in an active case.

**(p) Remedy for Failure to Try Defendant within the Specified Time.**

(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).

(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled “Notice of Expiration of Speedy Trial Time,” and serve a copy on the prosecuting attorney and the presiding judge.

(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall hold a hearing on the notice and, unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 20 days from the filing and

proper service of the Notice of Expiration of Speedy Trial Time. A defendant not brought to trial within 20 days of the filing and proper service of the Notice of Expiration of Speedy Trial Time, through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime.