

LEGISLATIVE BILL 436

Approved by the Governor April 30, 1971

Introduced by David H. Stahmer, 8th District

AN ACT relating to criminal procedure; to provide for the right to speedy trial as prescribed; to repeal sections 29-1202, 29-1203, and 29-1204, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency. Be it enacted by the people of the State of Nebraska,

Section 1. To effectuate the right of the accused to a speedy trial and the interest of the public in prompt disposition of criminal cases, insofar as is practicable:

(1) The trial of criminal cases shall be given preference over civil cases; and

(2) The trial of defendants in custody and defendants whose pretrial liberty is reasonably believed to present unusual risks shall be given preference over other criminal cases. It shall be the duty of the county attorney to bring to the attention of the trial court any cases falling within this subdivision, and he shall generally advise the court of facts relevant in determining the order of cases to be tried.

Sec. 2. Applications for continuances shall be made in accordance with section 25-1148, Reissue Revised Statutes of Nebraska, 1943, but in criminal cases in the district court the court shall grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case.

Sec. 3. (1) Every person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section.

(2) Such six-month period shall commence to run from the date the indictment is returned or the information filed. As to indictments or informations or orders for a new trial pending on the effective date of this act, such six-month period shall commence to run from the effective date of this act.

(3) If such defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, order granting a new trial, or the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions to suppress evidence, motions to quash the indictment or information, demurrers and pleas in abatement and motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;

(c) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) The continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant shall be granted a severance so that he

may be tried within the time limits applicable to him; and

(f) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause.

Sec. 4. If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, he shall be entitled to his absolute discharge from the offense charged and for any other offense required by law to be joined with that offense.

Sec. 5. Failure of the defendant to move for discharge prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to speedy trial.

Sec. 6. That sections 29-1202, 29-1203, and 29-1204, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.