

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1232

Short Title: Clarify Continuance Factors.

(Public)

Sponsors: Representative Flaherty.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE FACTORS LISTED IN THE SPEEDY TRIAL ACT FOR DETERMINING WHETHER TO GRANT A CONTINUANCE APPLY TO CRIMINAL CASES IN BOTH DISTRICT AND SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-701(b) reads as rewritten:

"(b) The following periods shall be excluded in computing the time within which the trial of a criminal offense must begin:

- (1) Any period of delay resulting from other proceedings concerning the defendant including, but not limited to, delays resulting from:
 - a. A mental or physical examination of the defendant, including all time when he is awaiting or undergoing treatment or examination, or a hearing on his mental or physical capacity; or
 - b. Trials with respect to other charges against the defendant;
 - c. Interlocutory appeals; or
 - d. Hearings on any pretrial motions or the granting or denial of such motions.

The period of delay under this subdivision must include all delay from the time a motion or other event occurs that begins the delay until the time a judge makes a final ruling on the motion or the event causing the delay is finally resolved;

- (2) Any period of delay during which the prosecution is deferred by the prosecutor pursuant to written agreement with the defendant with the

- 1 approval of the court, for the purpose of allowing the defendant to
2 demonstrate his good conduct;
- 3 (3) Any period of delay resulting from the absence of unavailability of the
4 defendant or an essential witness for the defendant or the State. For the
5 purpose of this subdivision, a defendant or an essential witness shall be
6 considered:
- 7 a. Absent when his whereabouts are unknown and he is attempting
8 to avoid apprehension or prosecution or when his whereabouts
9 cannot be determined by due diligence; and
- 10 b. Unavailable when his whereabouts are known but his presence
11 for testifying at the trial cannot be obtained by due diligence or
12 he resists appearing at or being returned for trial;
- 13 (4) Any period of delay resulting from the fact that the defendant is
14 mentally incapacitated or physically unable to stand trial;
- 15 (5) When a charge is dismissed by the prosecutor under the authority of
16 G.S. 15A-931 and afterwards a new indictment or information is filed
17 against the same defendant or the same defendant is arrested or served
18 with criminal process for the same offense, or an offense based on the
19 same act or transaction or on the same series of acts or transactions
20 connected together or constituting parts of a single scheme or plan, any
21 period of delay from the date the initial charge was dismissed to the
22 date the time limits for trial under this section would have commenced
23 to run as to the subsequent charge;
- 24 (6) A period of delay when the defendant is joined for trial with a
25 codefendant as to whom the time for trial has not run and no motion
26 for severance has been granted;
- 27 (7) Any period of delay resulting from a continuance granted by any judge
28 if the judge granting the continuance finds that the ends of justice
29 served by granting the continuance outweigh the best interests of the
30 public and the defendant in a speedy trial and sets forth in writing in
31 the record of the case the reasons for so finding. A superior court
32 judge must not grant a motion for continuance unless the motion is in
33 writing and he has made written findings as provided in this
34 subdivision.

35 The factors, among others, which a judge shall consider in
36 determining whether to grant a continuance in a criminal action in
37 either district or superior court are as follows:

- 38 a. Whether the failure to grant a continuance would be likely to
39 result in a miscarriage of justice;
- 40 b. Whether the case taken as a whole is so unusual and so
41 complex, due to the number of defendants or the nature of the
42 prosecution or otherwise, that it is unreasonable to expect
43 adequate preparation within the time limits established by this
44 section;

- 1 c. Repealed by Session Laws 1977, 2nd Sess., c. 1179, s. 6;
2 d. Good cause for granting a continuance shall include those
3 instances when the defendant, a witness, or counsel of record
4 has an obligation of service to the State of North Carolina,
5 including service as a member of the General Assembly; and
6 e. Whether the case involves physical or sexual child abuse when
7 a victim or witness is under 16 years of age, and whether further
8 delay would have an adverse impact on the well-being of the
9 child.

10 When a judge grants a continuance pursuant to this subsection, he
11 may specify in his order the period of time which shall be excluded
12 from the time within which the trial of the criminal case must begin.

- 13 (8) Any period of delay occasioned by the venue of the defendant's case
14 being within a county where, due to limited number of court sessions
15 scheduled for the county, the time limitations of this section cannot
16 reasonably be met. A county is conclusively presumed to be a county
17 where, due to the limited number of court sessions scheduled for the
18 county, the applicable time limit specified by this section cannot
19 reasonably be met, if the county has scheduled each year fewer than
20 eight regularly scheduled criminal or mixed weekly sessions of
21 superior court. In any other county, a determination shall be made in
22 each case whether the applicable time limit specified by this section
23 cannot reasonably be met due to the limited number of court sessions
24 scheduled for that county;
- 25 (9) A period of delay resulting from the defendant's being in the custody
26 of a penal or other institution of a jurisdiction other than the
27 jurisdiction in which the criminal offense is to be tried;
- 28 (10) A period of delay when the defendant or his attorney has an obligation
29 of service to the State of North Carolina or to the United States
30 government and the court, with the consent of both the defendant and
31 the State, continues the case for a period of time consistent with that
32 obligation;
- 33 (11) A period of delay from time the prosecutor enters a dismissal with
34 leave for the nonappearance of the defendant until the prosecutor
35 reinstitutes the proceedings pursuant to G.S. 15A-932;
- 36 (12) When a charge is dismissed by a judge other than under G.S. 15A-703
37 or a finding of no probable cause pursuant to G.S.15A-612, and
38 afterwards a new indictment or information is filed against the same
39 defendant or the same defendant is arrested or served with criminal
40 process for the same offense, or an offense based on the same act or
41 transaction or on the same series of transactions connected together or
42 constituting parts of a single scheme or plan, any period of delay from
43 the date the initial charge was dismissed to the date the time limits for

- 1 trial under this section would have commenced to run as to the
2 subsequent charge;
- 3 (13) Any period of delay from the time criminal process is served on a
4 defendant who has previously been called and failed until the time that
5 the district attorney receives notice that the criminal process has been
6 served;
- 7 (14) Any period of delay from the time the defendant has been called and
8 failed in open court until the time that the district attorney receives
9 notice that the criminal process was stricken or was never issued; and
- 10 (15) Any period of delay from the time that a defendant has been returned
11 from court-ordered or -approved hospitalization, treatment, or
12 examination until the time that the district attorney receives notice that
13 the defendant has returned."
- 14 ♦ Sec. 2. This act is effective upon ratification.