



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5431

Introduced 1/31/2022, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-5

from Ch. 38, par. 103-5

Amends the Code of Criminal Procedure of 1963. Provides that a trial may not be delayed absent consent by the person or persons charged merely because of COVID-19, but that consent may not be unreasonably withheld. Provides that to stop or suspend a trial in progress or to not timely commence a trial that has been scheduled requires an individual quarantine order, medical order, or active infection of COVID-19 in the judge, a juror, a witness, a party, or legal counsel. Provides that the court may make reasonable efforts and accommodations for a trial in progress to stop or suspend the trial for a limited time or take other remedial measures that are in the best interests of the trial participants' health and safety, including, but not limited to, severing charges or persons, revisions to witness order, or seating of alternate jurors, but measures shall not include obligating the person or persons charged to modify legal counsel or obligating the accused to not call a witness in defense. Provides that the remedy for a violation of this subsection is securing injunctive relief to resume trial and, if the person or persons charged are granted the injunction to resume the trial, the moving party or parties shall be afforded reasonable costs and attorney's fees. Effective immediately.

LRB102 25078 RLC 35355 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 103-5 as follows:

6 (725 ILCS 5/103-5) (from Ch. 38, par. 103-5)

7 (Text of Section before amendment by P.A. 101-652)

8 Sec. 103-5. Speedy trial.)

9 (a) Every person in custody in this State for an alleged
10 offense shall be tried by the court having jurisdiction within
11 120 days from the date he or she was taken into custody unless
12 delay is occasioned by the defendant, by an examination for
13 fitness ordered pursuant to Section 104-13 of this Act, by a
14 fitness hearing, by an adjudication of unfitness to stand
15 trial, by a continuance allowed pursuant to Section 114-4 of
16 this Act after a court's determination of the defendant's
17 physical incapacity for trial, or by an interlocutory appeal.
18 Delay shall be considered to be agreed to by the defendant
19 unless he or she objects to the delay by making a written
20 demand for trial or an oral demand for trial on the record. The
21 provisions of this subsection (a) do not apply to a person on
22 bail or recognizance for an offense but who is in custody for a
23 violation of his or her parole, aftercare release, or

1 mandatory supervised release for another offense.

2 The 120-day term must be one continuous period of
3 incarceration. In computing the 120-day term, separate periods
4 of incarceration may not be combined. If a defendant is taken
5 into custody a second (or subsequent) time for the same
6 offense, the term will begin again at day zero.

7 (b) Every person on bail or recognizance shall be tried by
8 the court having jurisdiction within 160 days from the date
9 defendant demands trial unless delay is occasioned by the
10 defendant, by an examination for fitness ordered pursuant to
11 Section 104-13 of this Act, by a fitness hearing, by an
12 adjudication of unfitness to stand trial, by a continuance
13 allowed pursuant to Section 114-4 of this Act after a court's
14 determination of the defendant's physical incapacity for
15 trial, or by an interlocutory appeal. The defendant's failure
16 to appear for any court date set by the court operates to waive
17 the defendant's demand for trial made under this subsection.

18 For purposes of computing the 160 day period under this
19 subsection (b), every person who was in custody for an alleged
20 offense and demanded trial and is subsequently released on
21 bail or recognizance and demands trial, shall be given credit
22 for time spent in custody following the making of the demand
23 while in custody. Any demand for trial made under this
24 subsection (b) shall be in writing; and in the case of a
25 defendant not in custody, the demand for trial shall include
26 the date of any prior demand made under this provision while

1 the defendant was in custody.

2 (c) If the court determines that the State has exercised
3 without success due diligence to obtain evidence material to
4 the case and that there are reasonable grounds to believe that
5 such evidence may be obtained at a later day the court may
6 continue the cause on application of the State for not more
7 than an additional 60 days. If the court determines that the
8 State has exercised without success due diligence to obtain
9 results of DNA testing that is material to the case and that
10 there are reasonable grounds to believe that such results may
11 be obtained at a later day, the court may continue the cause on
12 application of the State for not more than an additional 120
13 days.

14 (d) Every person not tried in accordance with subsections
15 (a), (b) and (c) of this Section shall be discharged from
16 custody or released from the obligations of his bail or
17 recognizance.

18 (e) If a person is simultaneously in custody upon more
19 than one charge pending against him in the same county, or
20 simultaneously demands trial upon more than one charge pending
21 against him in the same county, he shall be tried, or adjudged
22 guilty after waiver of trial, upon at least one such charge
23 before expiration relative to any of such pending charges of
24 the period prescribed by subsections (a) and (b) of this
25 Section. Such person shall be tried upon all of the remaining
26 charges thus pending within 160 days from the date on which

1 judgment relative to the first charge thus prosecuted is
2 rendered pursuant to the Unified Code of Corrections or, if
3 such trial upon such first charge is terminated without
4 judgment and there is no subsequent trial of, or adjudication
5 of guilt after waiver of trial of, such first charge within a
6 reasonable time, the person shall be tried upon all of the
7 remaining charges thus pending within 160 days from the date
8 on which such trial is terminated; if either such period of 160
9 days expires without the commencement of trial of, or
10 adjudication of guilt after waiver of trial of, any of such
11 remaining charges thus pending, such charge or charges shall
12 be dismissed and barred for want of prosecution unless delay
13 is occasioned by the defendant, by an examination for fitness
14 ordered pursuant to Section 104-13 of this Act, by a fitness
15 hearing, by an adjudication of unfitness for trial, by a
16 continuance allowed pursuant to Section 114-4 of this Act
17 after a court's determination of the defendant's physical
18 incapacity for trial, or by an interlocutory appeal; provided,
19 however, that if the court determines that the State has
20 exercised without success due diligence to obtain evidence
21 material to the case and that there are reasonable grounds to
22 believe that such evidence may be obtained at a later day the
23 court may continue the cause on application of the State for
24 not more than an additional 60 days.

25 (f) Delay occasioned by the defendant shall temporarily
26 suspend for the time of the delay the period within which a

1 person shall be tried as prescribed by subsections (a), (b),
2 or (e) of this Section and on the day of expiration of the
3 delay the said period shall continue at the point at which it
4 was suspended. Where such delay occurs within 21 days of the
5 end of the period within which a person shall be tried as
6 prescribed by subsections (a), (b), or (e) of this Section,
7 the court may continue the cause on application of the State
8 for not more than an additional 21 days beyond the period
9 prescribed by subsections (a), (b), or (e). This subsection
10 (f) shall become effective on, and apply to persons charged
11 with alleged offenses committed on or after, March 1, 1977.

12 (g) Notwithstanding any other provision of this Section to
13 the contrary, a trial may not be delayed absent consent by the
14 person or persons charged merely because of COVID-19. However,
15 consent may not be unreasonably withheld. To stop or suspend a
16 trial in progress or to not timely commence a trial that has
17 been scheduled requires an individual quarantine order,
18 medical order, or active infection of COVID-19 in the judge, a
19 juror, a witness, a party, or legal counsel. The court may make
20 reasonable efforts and accommodations for a trial in progress
21 to stop or suspend the trial for a limited time or take other
22 remedial measures that are in the best interests of the trial
23 participants' health and safety, including, but not limited
24 to, severing charges or persons, revisions to witness order,
25 or seating of alternate jurors, but measures shall not include
26 obligating the person or persons charged to modify legal

1 counsel or obligating the accused to not call a witness in
2 defense.

3 The remedy for a violation of this subsection is securing
4 injunctive relief to resume trial. If the person or persons
5 charged are granted the injunction to resume the trial, the
6 moving party or parties shall be afforded reasonable costs and
7 attorney's fees.

8 (Source: P.A. 98-558, eff. 1-1-14.)

9 (Text of Section after amendment by P.A. 101-652)

10 Sec. 103-5. Speedy trial.)

11 (a) Every person in custody in this State for an alleged
12 offense shall be tried by the court having jurisdiction within
13 120 days from the date he or she was taken into custody unless
14 delay is occasioned by the defendant, by an examination for
15 fitness ordered pursuant to Section 104-13 of this Act, by a
16 fitness hearing, by an adjudication of unfitness to stand
17 trial, by a continuance allowed pursuant to Section 114-4 of
18 this Act after a court's determination of the defendant's
19 physical incapacity for trial, or by an interlocutory appeal.
20 Delay shall be considered to be agreed to by the defendant
21 unless he or she objects to the delay by making a written
22 demand for trial or an oral demand for trial on the record. The
23 provisions of this subsection (a) do not apply to a person on
24 pretrial release or recognizance for an offense but who is in
25 custody for a violation of his or her parole, aftercare

1 release, or mandatory supervised release for another offense.

2 The 120-day term must be one continuous period of
3 incarceration. In computing the 120-day term, separate periods
4 of incarceration may not be combined. If a defendant is taken
5 into custody a second (or subsequent) time for the same
6 offense, the term will begin again at day zero.

7 (b) Every person on pretrial release or recognizance shall
8 be tried by the court having jurisdiction within 160 days from
9 the date defendant demands trial unless delay is occasioned by
10 the defendant, by an examination for fitness ordered pursuant
11 to Section 104-13 of this Act, by a fitness hearing, by an
12 adjudication of unfitness to stand trial, by a continuance
13 allowed pursuant to Section 114-4 of this Act after a court's
14 determination of the defendant's physical incapacity for
15 trial, or by an interlocutory appeal. The defendant's failure
16 to appear for any court date set by the court operates to waive
17 the defendant's demand for trial made under this subsection.

18 For purposes of computing the 160 day period under this
19 subsection (b), every person who was in custody for an alleged
20 offense and demanded trial and is subsequently released on
21 pretrial release or recognizance and demands trial, shall be
22 given credit for time spent in custody following the making of
23 the demand while in custody. Any demand for trial made under
24 this subsection (b) shall be in writing; and in the case of a
25 defendant not in custody, the demand for trial shall include
26 the date of any prior demand made under this provision while

1 the defendant was in custody.

2 (c) If the court determines that the State has exercised
3 without success due diligence to obtain evidence material to
4 the case and that there are reasonable grounds to believe that
5 such evidence may be obtained at a later day the court may
6 continue the cause on application of the State for not more
7 than an additional 60 days. If the court determines that the
8 State has exercised without success due diligence to obtain
9 results of DNA testing that is material to the case and that
10 there are reasonable grounds to believe that such results may
11 be obtained at a later day, the court may continue the cause on
12 application of the State for not more than an additional 120
13 days.

14 (d) Every person not tried in accordance with subsections
15 (a), (b) and (c) of this Section shall be discharged from
16 custody or released from the obligations of his pretrial
17 release or recognizance.

18 (e) If a person is simultaneously in custody upon more
19 than one charge pending against him in the same county, or
20 simultaneously demands trial upon more than one charge pending
21 against him in the same county, he shall be tried, or adjudged
22 guilty after waiver of trial, upon at least one such charge
23 before expiration relative to any of such pending charges of
24 the period prescribed by subsections (a) and (b) of this
25 Section. Such person shall be tried upon all of the remaining
26 charges thus pending within 160 days from the date on which

1 judgment relative to the first charge thus prosecuted is
2 rendered pursuant to the Unified Code of Corrections or, if
3 such trial upon such first charge is terminated without
4 judgment and there is no subsequent trial of, or adjudication
5 of guilt after waiver of trial of, such first charge within a
6 reasonable time, the person shall be tried upon all of the
7 remaining charges thus pending within 160 days from the date
8 on which such trial is terminated; if either such period of 160
9 days expires without the commencement of trial of, or
10 adjudication of guilt after waiver of trial of, any of such
11 remaining charges thus pending, such charge or charges shall
12 be dismissed and barred for want of prosecution unless delay
13 is occasioned by the defendant, by an examination for fitness
14 ordered pursuant to Section 104-13 of this Act, by a fitness
15 hearing, by an adjudication of unfitness for trial, by a
16 continuance allowed pursuant to Section 114-4 of this Act
17 after a court's determination of the defendant's physical
18 incapacity for trial, or by an interlocutory appeal; provided,
19 however, that if the court determines that the State has
20 exercised without success due diligence to obtain evidence
21 material to the case and that there are reasonable grounds to
22 believe that such evidence may be obtained at a later day the
23 court may continue the cause on application of the State for
24 not more than an additional 60 days.

25 (f) Delay occasioned by the defendant shall temporarily
26 suspend for the time of the delay the period within which a

1 person shall be tried as prescribed by subsections (a), (b),
2 or (e) of this Section and on the day of expiration of the
3 delay the said period shall continue at the point at which it
4 was suspended. Where such delay occurs within 21 days of the
5 end of the period within which a person shall be tried as
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18 medical order, or active infection of COVID-19 in the judge, a
19 juror, a witness, a party, or legal counsel. The court may make
20 reasonable efforts and accommodations for a trial in progress
21 to stop or suspend the trial for a limited time or take other
22 remedial measures that are in the best interests of the trial
23 participants' health and safety, including, but not limited
24 to, severing charges or persons, revisions to witness order,
25 or seating of alternate jurors, but measures shall not include
26 obligating the person or persons charged to modify legal

1 counsel or obligating the accused to not call a witness in
2 defense.

3 The remedy for a violation of this subsection is securing
4 injunctive relief to resume trial. If the person or persons
5 charged are granted the injunction to resume the trial, the
6 moving party or parties shall be afforded reasonable costs and
7 attorney's fees.

8 (Source: P.A. 101-652, eff. 1-1-23.)

9 Section 95. No acceleration or delay. Where this Act makes
10 changes in a statute that is represented in this Act by text
11 that is not yet or no longer in effect (for example, a Section
12 represented by multiple versions), the use of that text does
13 not accelerate or delay the taking effect of (i) the changes
14 made by this Act or (ii) provisions derived from any other
15 Public Act.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.