

Proposed amendments to Rules of Criminal Procedure 3.134 (Time for Filing Formal Charges) and 3.191 (Speedy Trial), and Florida Rule of Appellate Procedure 9.140 (Appeal Proceedings in Criminal Cases)

The Florida Supreme Court is considering amendments to Florida Rules of Criminal Procedure 3.134 (Time for Filing Formal Charges) and 3.191 (Speedy Trial), and Florida Rule of Appellate Procedure 9.140 (Appeal Proceedings in Criminal Cases). Some of the amendments were proposed by the Florida Bar's Criminal Procedure Rules Committee (Rules Committee) in Case No. SC20-1101, and some of the amendments were drafted by the Court in light of prior proposals by the Supreme Court's Criminal Court Steering Committee (Steering Committee) in Case No. 19-1592 and are being considered on the Court's own motion. The Court is considering alternate amendments to rule 3.191 and are designated as Alternative A and Alternative B below. All of the rule amendments under consideration will be reviewed in *In re: Amendments to Florida Rules of Criminal Procedure 3.134 and 3.191 and Florida Rule of Appellate Procedure 9.140*, Case No. SC20-1101, and pertain to the operation of the speedy trial rule with respect to "arrest," the recapture period, and appeal.

The Court invites all interested persons to comment on the amendments under consideration which are reproduced in full below. The Rules Committee and the Steering Committee are specifically requested to file comments. The Appellate Court Rules Committee may also file a comment. All comments must be filed with the Court on or before December 31, 2020, with a certificate of service verifying that a copy has been served on the Rules Committee Chair, Judge Angela Cote Dempsey, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe Street, Room 301E, Tallahassee, Florida 32301-1861, dempseya@leoncountyfl.gov, and on the Bar Staff Liaison to the Rules Committee, Mikalla Andies Davis, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, mdavis@floridabar.org, and on the Steering Committee Chair, Judge Debra J. Riva, P.O. Box 48927, Sarasota, Florida 34230-5927, driva@jud12.flcourts.org, and on the OSCA Support Liaison to the Steering Committee, Bart Schneider, Office of the General Counsel, 500 S. Duval Street, Tallahassee, Florida 32399-1925, schneidb@flcourts.org, and where applicable, on

the Appellate Court Rules Chair, Judge Stephanie Williams Ray, First District Court of Appeal, 2000 Drayton Drive, Tallahassee, Florida 32399-0001, and on the Bar Staff Liaison to the Appellate Court Rules Committee, Krys Godwin, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, kgodwin@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chairs may file a response to any comments filed with the Court, by January 21, 2021. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. See *In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.134 AND 3.191 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.140, CASE NO. SC20-1101

RULE 3.134. TIME FOR FILING FORMAL CHARGES

(a) Defendant in Custody. The state shall file formal charges on a defendants in custody ~~by information, or indictment, or in the case of alleged misdemeanors by whatever documents constitute a formal charge,~~ within 30 days from the date on which ~~the~~ defendants ~~are~~is arrested ~~or from the date of the service of~~ ~~capiases upon them.~~ If the defendants remains uncharged, upon motion, the court on the 30th day and with notice to the state shall:

- (1) Order that the defendants automatically be released on ~~their~~his or ~~her~~ own recognizance on the 33rd day unless the state files formal charges by that date; or

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

In no event shall any defendants remain in custody beyond 40 days unless ~~they have~~he or she has been formally charged with a crime.

(b) Defendant Out of Custody. For a defendant who is out of custody, conditions of pretrial release must be lifted, upon motion, if the state does not file a formal charge within 175 days from arrest.

RULE 3.191.

SPEEDY TRIAL

[Alternative A (Speedy Trial retaining w/o Demand)]

(a) Speedy Trial without Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest, 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 shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition. This subdivision shall cease to apply whenever a person files a valid demand for speedy trial under subdivision (b).Except as otherwise provided in this rule, if a formal charging document is pending and if the defendant is not brought to trial within:

1. 90 days following arrest, if the crime charged is a misdemeanor, or
2. 175 days following arrest, if the crime charged is a felony;

then the defendant, after filing and serving a valid notice of expiration of speedy trial time in accordance with subdivision (h), shall be entitled to the remedy in subdivision (p). This subdivision shall cease to apply whenever a defendant waives the provisions of this subdivision or files a valid demand for speedy trial under subdivision (b).

(b) Speedy Trial upon Demand. Except as otherwise provided by this rule, ~~and subject to the limitations imposed under subdivisions (e) and (g), every person charged with a crime by indictment or information shall have the right to if a formal charging document is pending, a defendant may demand a speedy trial within 60 days,~~ by filing with the court a separate pleading entitled "Demand for Speedy Trial," and serving a copy on the prosecuting authority.

(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~~30~~ 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~~35~~ days of the filing ~~and service of the demand, after filing and serving a valid notice of expiration of speedy trial time in accordance with subdivision (h), the defendant shall have the right to be entitled to the appropriate remedy as set forth in subdivision (p).~~

(c) Commencement of Trial. [NO CHANGE]

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

(1) when a person is taken into custody 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.**Arrest.** For purposes of this rule, arrest means:

(1) when a person is taken into custody as a result of the conduct or criminal episode that gave rise to the crime charged, and for the purpose of being held to answer in court from criminal charges arising from that conduct or criminal episode; or

(2) when, in lieu of being taken into custody, the person is served with a notice to appear or summons that requires the defendant to appear in court at a specified date and time.

(e) Prisoners outside Jurisdiction. A person who is in federal custody or incarcerated in a jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, and who is charged with a crime by indictment or information issued or filed under the laws of this state, in custody in another jurisdiction is not entitled to the benefit of this rule until:

(1) that person returns or is returned to the jurisdiction of the court county within which the Florida charge is pending; and

(2) and until written notice of the person's return is filed with the court and served on the prosecutorprosecuting authority.

"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.

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. Nothing in this rule shall affect a prisoner's right to speedy trial under law.

(f) Consolidation of Felony and Misdemeanor. [NO CHANGE]

(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, has completed all necessary discovery, has secured necessary rulings on pretrial motions, and is fully 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 Filed; Service. ~~A notice of expiration of speedy trial time may not be filed 1) unless a formal charging document is pending; 2) until after the first scheduled or held arraignment on the pending charging document; and 3) until after the expiration of the periods of time for commencement of trial provided in this rule. A notice of expiration of speedy trial time shall be timely if must be filed and served on the prosecuting authority with a copy provided to 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 May Be Extended. The periods of time established by this rule 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 Rules of Judicial Administration 2.205(a)(2)(B)(iv) or 2.205(a)(2)(B)(v), suspending the speedy trial procedures as stated thereinthis rule.

(j) Delay and Continuances; Effect on Motion Striking of Notice of Expiration of Speedy Trial Time. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that:A notice of expiration of speedy trial time shall be stricken upon a finding 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); or

(4) the demand referred to in subdivisions (b) and (g) is invalid; or

(5) the notice of expiration was not filed or served in accordance with subdivision (h).

~~If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (j)(3), or (j)(4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.~~

(k) Availability for Trial. [NO CHANGE]

(l) Exceptional Circumstances. [NO CHANGE]

(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 ~~may file and serve a valid notice of expiration of speedy trial time in accordance with subdivision (h)~~ and shall then be entitled to the appropriate remedy as set forth in subdivision (p).

(n) Discharge from Crime; Effect. [NO CHANGE]

(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 no information or a nolle prosequi.~~

(1) If the state files a nolle prosequi after the defendant waived a time period for commencement of trial in this rule, a subsequent arrest of the defendant on charges arising out of the same criminal episode shall start a new speedy trial period, in accordance with subdivision (a).

(2) Absent a defendant's waiver, the time periods for commencement of trial in this rule continue to run if the state files a nolle prosequi at any time outside of the 30-day recapture window. If the state files a new charging document on charges arising out of the same criminal episode following a nolle prosequi, the defendant may avail himself or herself of the appropriate provisions of this rule.

(3) If the state files a nolle prosequi within the 30-day recapture period in subdivision (p)(2), the defendant shall be entitled to discharge pursuant to subdivision (n) unless the court finds, upon a state's motion filed within the recapture period, that the nolle prosequi was necessitated by exceptional circumstances as defined in subdivision (l).

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

(1) No remedy shall be granted to any defendant under this rule subdivision until the period of time for commencement of trial expired and 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 authority.

(32) No later than 510 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 1030 days from the filing and service of a valid notice of expiration of speedy trial time. A defendant not brought to trial within the 10 day period30 days of the filing and service of a valid 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.

(q) Remedy for Lack of Notice of Charges Filed. The failure of a defendant to receive notice that the state filed a charging document does not entitle the defendant to discharge under this rule. Once notice is received, the defendant may avail himself or herself of the appropriate provisions of this rule.

(r) Effect of Appeal from a Finding Related to Exceptional Circumstances in the Recapture Window. The losing party may appeal a finding as to whether a nolle prosequi was necessitated by exceptional circumstances. If the defendant prevails on appeal, the trial must commence within 30 days after the issuance of the mandate, unless the defendant agrees to a later trial date. Failure to commence the trial within the 30 days, absent a defendant's request for a delay, entitles the defendant to discharge pursuant to subdivision (n).

Committee Notes [No Change]

Court Commentary

2020 Amendment. The Court's amendments are intended to prevent the procedural rule from interfering with the statute of limitations and to give the State a recapture period in which to try the case.

[Alternative B (Speedy Trial excluding w/o Demand)]

(a) Speedy Trial without Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest, 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 shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled

~~to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition. This subdivision shall cease to apply whenever a person files a valid demand for speedy trial under subdivision (b).~~

(ba) Speedy Trial upon Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (g), every person charged with a crime by indictment or information shall have the right to if a formal charging document is pending, a defendant may demand a speedy trial within 60 days, by filing with the court a separate pleading entitled "Demand for Speedy Trial," and serving a copy on the prosecuting authority.

(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~~30~~ 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~~35~~ days of the filing and service of the demand, after filing and serving a valid notice of expiration of speedy trial time in accordance with subdivision (e), the defendant shall have the right to be entitled to the appropriate remedy as set forth in subdivision (pm).

(eb) 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 a person is taken into custody 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.~~

(ec) Prisoners outside Jurisdiction. A person who is ~~in federal custody or incarcerated in a jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, and who is charged with a crime by indictment or information issued or filed under the laws of this state, in custody in another jurisdiction~~ is not entitled to the benefit of this rule until:

~~(1) that person returns or is returned to the jurisdiction of the court county within which the Florida charge is pending; and~~

~~(2) and until written notice of the person's return is filed with the court and served on the prosecutorprosecuting authority.~~

"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.~~

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. Nothing in this rule shall affect a prisoner's right to speedy trial under law.~~

(f) Consolidation of Felony and Misdemeanor. When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony.

(gd) 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, has completed all necessary discovery, has secured necessary rulings on pretrial motions, and is fully 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.

(he) Notice of Expiration of Time for Speedy Trial; When Timely Filed; Service. ~~A notice of expiration of speedy trial time may not be filed 1) unless a formal charging document is pending; 2) until after the first scheduled or held arraignment on the pending charging document; and 3) until after the expiration of the periods of time for commencement of trial provided in this rule. A notice of expiration of speedy trial time shall be timely if must be filed and served on the prosecuting authority with a copy provided to 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.~~

(if) When Time May Be Extended. The periods of time established by this rule 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 ~~(f)~~(i);
- (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 Rules of Judicial Administration 2.205(a)(2)(B)(iv) or 2.205(a)(2)(B)(v), suspending the speedy trial procedures as stated ~~therein~~this rule.

(jg) Delay and Continuances; Effect on Motion Striking of Notice of Expiration of Speedy Trial Time. If trial of the accused does not commence within the periods of time established ~~by this rule~~, a pending motion for discharge shall be granted by the court unless it is shown that:A notice of expiration of speedy trial time shall be stricken upon a finding that:

(1) a time extension has been ordered under subdivision (if) 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 (kh); or

(4) the demand referred to in subdivisions (a) and (d) (g) is invalid; or

(5) the notice of expiration of time for speedy trial was not filed or served in accordance with subdivision (e).

~~If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (j)(3), or (j)(4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.~~

(kh) 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.

(i) Exceptional Circumstances. As permitted by subdivision (if) 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)-(6) [No Changes]

(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~~may file and serve a valid notice of expiration of speedy trial time in accordance with subdivision (e) and shall then be entitled to the appropriate remedy as set forth in subdivision (pm).

(nk) Discharge from Crime; Effect. 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 no information or a nolle prosequi.~~

(1) ~~The time periods for commencement of trial in this rule continue to run if the state files a nolle prosequi before the 30-day recapture period in subdivision (m)(2). If the state files a new charging document on charges arising out of the~~

same criminal episode following a nolle prosequi, the defendant may avail himself or herself of the appropriate provisions of this rule.

(2) If the state files a nolle prosequi within the 30-day recapture period in subdivision (m)(2), the defendant shall be entitled to discharge pursuant to subdivision (k) unless the court finds, upon a state's motion filed within the recapture period, that the nolle prosequi was necessitated by exceptional circumstances as defined in subdivision (i).

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

(1) No remedy shall be granted to any defendant under this rule subdivision until the period of time for commencement of trial expired and the court has made the required inquiry under subdivision (jg).

(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 authority.

(32) No later than 510 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 (jg) exists, shall order that the defendant be brought to trial within 1030 days from the filing and service of a valid notice of expiration of speedy trial time. A defendant not brought to trial within the 10-day period30 days of the filing and service of a valid 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.

(n) Effect of Appeal from a Finding Related to Exceptional Circumstances in the Recapture Window. The losing party may appeal a finding as to whether a nolle prosequi was necessitated by exceptional circumstances. If the defendant prevails on appeal, the trial must commence within 30 days after the issuance of the mandate, unless the defendant agrees to a later trial date. Failure to commence the trial within the 30 days, absent a defendant's request for a delay, entitles the defendant to discharge pursuant to subdivision (k).

Committee Notes [No Change]

Court Commentary

2020 Amendment. The Court's amendments are intended to prevent the procedural rule from interfering with the statute of limitations and to give the State a recapture period in which to try the case.

RULE 9.140 APPEAL PROCEEDINGS IN CRIMINAL CASES

(a) Applicability. [NO CHANGE]

(b) Appeals by Defendant.

(1) Appeals Permitted. A defendant may appeal:

(A)-(E) [NO CHANGE]

(F) a sentence, if the appeal is required or permitted by general law; or

(G) an order finding that a nolle prosequi entered during the 30-day recapture period in rule 3.191 was necessitated by exceptional circumstances; or

(GH) as otherwise provided by general law.

(2)-(4) [NO CHANGE]

(c) Appeals by the State.

(1) Appeals Permitted. The state may appeal an order:

(A)-(N) [No Change]

(O) denying restitution; or

(P) finding that a nolle prosequi entered during the 30-day recapture period in rule 3.191 was not necessitated by exceptional circumstances; or

(PQ) as otherwise provided by general law for final orders.

(2)-(3) [NO CHANGE]

(d) – (i) [NO CHANGE]