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The Nonexistent Speedy Trial Right

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ABSTRACT

The United States Constitution and all fifty states guarantee a speedy trial right for individuals accused of crimes. The controlling United States Supreme Court case, decided over fifty years ago, described the Sixth Amendment as a fundamental right with Fourteenth Amendment Due Process implications. Although the right to a speedy trial is a universally recognized right, this Article compellingly demonstrates the right is actually nonexistent throughout the United States. The COVID-19 pandemic highlighted and exacerbated this previously unrecognized problem in courthouses across the country, which has led to news outlets finally covering the issue of the nonexistent speedy trial. This Article provides a groundbreaking analysis of the laws addressing the speedy trial right in all states and the federal government, reviewing all constitutions, statutes, and rules of criminal procedure. This Article is the first in legal scholarship to explore the speedy trial right without focusing on a specific jurisdiction, and it includes the first fifty-state survey on this topic.

This unprecedented fifty-state survey reveals that the current laws addressing speedy trial are grossly inadequate, allowing courts to regularly and routinely deprive the accused of timely trials. The main problems with the current laws are the lack of strict timelines and meaningful remedies. Fourteen states do not provide a timeline. Eleven states have obscenely long timelines in excess of six months for even the most basic trials. Additionally, my

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exhaustive research exposes that nine states have no remedy if the speedy trial right is violated. Seven of those nine states have neither a defined timeline nor remedy.

To solve this pervasive national problem, Part IV includes a proposed law that judges and legislatures should use to ensure the speedy trial is truly a right guaranteed to all accused of a crime.

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I. INTRODUCTION

My career began in Wisconsin where I worked for the State Public Defender's Office. I now work in Colorado which has a far more robust right to a speedy trial.[1] Such a welcome surprise made me curious how other states treat the right. I was horrified by what I found. This Article addresses the often-complete deprivation of a right guaranteed by the Constitution of the United States—the right to a speedy trial. Though some scholars have researched speedy trial issues in federal court[2] and others have researched specific jurisdictions,[3] no scholar has conducted a state-by-state analysis. This

1. Although the Colorado statute is much more favorable to the accused person than the Wisconsin statute, the Colorado statute is not perfect and has faced criticism. *See* Marie Zoglo, Note, *Statutory Speedy Trial Period Calculations for Dismissed and Refiled Charges: A Case Study of Colorado's Approach*, 97 WASH. U. L. REV. 903, 903 (2020). Zoglo argues that a large loophole to the dismissal with prejudice remedy exists because the speedy trial clock restarts when a case is recharged "unless the defendant can prove that the prosecution '*indiscriminately*' dismissed and refiled the charges in order to circumvent the speedy trial mandate." *Id.* Therefore, prosecutors dismiss and recharge cases when they are unprepared, and no Colorado court has found that an accused person has met the standard. *Id.*

2. *See, e.g.*, Eliot T. Tracz, *Revisiting the Right to a Speedy Trial: Reconciling the Sixth Amendment with the Speedy Trial Act*, 47 CAP. U. L. REV. 1, 8–11 (2019); Shon Hopwood, *The Not So Speedy Trial Act*, 89 WASH. L. REV. 709, 710–11 (2014) (arguing federal courts have consistently diluted the Speedy Trial Act's requirements, which continues to cause considerable delay between arraignments and trials, the very problem the Act was intended to eliminate); Robert L. Doyel, *The Federal Speedy Trial Act: Stampede into Ambush*, 16 J. MARSHALL L. REV. 27, 48 (1982) ("Congress . . . has a responsibility for implementing changes in the Act which would restore fairness to the criminal proceeding. It could amend the Speedy Trial Act, extending the 70-day indictment to trial period to a more reasonable length, depending on the nature of the crime charged."); Kenneth Mann, *The Speedy Trial Planning Process*, 17 HARV. J. ON LEGIS. 54, 57–58 (1980); Robert L. Misner, *District Court Compliance with the Speedy Trial Act of 1974: The Ninth Circuit Experience*, 1977 ARIZ. ST. L.J. 1, 2 (1977); Lawrence J. Sandell, *Speedy Trial—The Search for Workable Criteria*, 3 N. KY. ST. L.F. 42, 75 (1975) ("The [S]ixth [A]mendment right to speedy trial will continue to afford protection in only the most extreme cases, as courts have applied *Barker* with 'freakish' inconsistency.").

3. *See* Zoglo, *supra* note 1, at 903 (analyzing statutory speedy trial in Colorado); Kat Albrecht et al., *Justice Delayed: The Complex System of Delays in Criminal Court*, 53 LOY. U. CHI. L.J. 747, 750–51 (2022) (analyzing speedy trial in Cook County, Illinois); Katharine W. Batchelor, Comment, *A Perfect Storm: Prosecutorial Calendar Control and the Right to a Speedy Trial in the North Carolina Criminal Court System*, 56 WAKE FOREST L. REV. 169, 169 (2021) (arguing the lack of a true speedy trial right in North Carolina contributes to "procedural deficiencies that leave [the accused] exposed to undue delays between indictment and trial and without sufficient avenues for remedy. . . . to the detriment of defendants"); Daniel Hamburg, Note, *A Broken Clock: Fixing New York's Speedy Trial Statute*, 48 COLUM. J. L. & SOC. PROBS. 223, 223 (2015) (arguing "that by adopting a true speedy trial rule and excluding routine court congestion as a permissible source of delay, while also reviving the constitutional right for misdemeanor cases, the promise of speedy trials can be restored to New York's criminal courts").

Article fills that gap. Its original research analyzes the constitutional and statutory law regarding the speedy trial right in all fifty states and the federal government. The Article also offers a model framework that legislatures or supreme courts could use to craft statutes or rules of criminal procedure that would ensure the accused the meaningful right to a speedy trial that the drafters of the Constitution of the United States intended.

On January 1, 2019, I opened Clara Gideon's[4] case.[5] Ms. Gideon was arrested in Wisconsin in August 2016, but a jury did not reach a verdict in her case until August 2022. Specifically, 2,145 days (seventy-one and a half months) passed between the entry of her not guilty plea[6] and the verdict reached by a jury of her peers. Had Ms. Gideon been prosecuted in Colorado, a jury would have decided her case within 180 days (six months).[7] Additionally, if the State failed to bring Ms. Gideon's case within that timeframe, the court would have dismissed the charges against her with prejudice.[8]

Prior to my representation of Ms. Gideon, two other lawyers had represented her, her case had been dismissed and recharged, and she had appeared

4. I recieved written and verbal consent to discuss Ms. Gideon's case, but for privacy purposes, I changed her name in this Article.

5. The State charged Ms. Gideon with two counts of essentially the same crime: (1) operating a motor vehicle while intoxicated in violation of Wisconsin statute section 346.63(1)(a), and (2) operating a motor vehicle with a prohibited alcohol concentration in violation of Wisconsin statute section 346.63(1)(b), both her third offense. In Wisconsin, you can be charged with both crimes, but can only be penalized for either operating a motor vehicle while intoxicated or operating a motor vehicle with a prohibited alcohol concentration because both charges are under the same statute and prohibit essentially the same conduct. *See* WIS. STAT. § 346.63(1)(c) (2015). Operating a motor vehicle while intoxicated adds an element that the State must prove, that the individual's "ability to operate a vehicle was impaired because of consumption of an alcoholic beverage." Wis. JI—Criminal 2669 (2015). Conversely, operating a motor vehicle with a prohibited alcohol concentration only requires that the State prove that the individual's blood alcohol concentration (BAC) was at a 0.08 or more at the time of driving or operating the motor vehicle. *Id.* A person's BAC is calculated as 0.08 grams or more of alcohol in 210 liters of breath or 0.08 grams or more of alcohol in 100 milliliters of blood. *Id.* This leads to juries often finding the accused not guilty of operating a motor vehicle while intoxicated because the jurors see that as the more serious charge and finding the accused guilty of operating a motor vehicle with prohibited alcohol concentration—an unfortunate outcome because each count has the same maximum and minimum penalties. *See generally DUI Laws in Wisconsin*, NAT'L C. DUI DEF., https://www.ncdd.com/wisconsin-dui-owi-laws (last visited Mar. 10, 2024) (outlining penalties for both of the Wisconsin statutes).

6. Ms. Gideon initially entered her not guilty plea on September 19, 2016.

7. *See* COLO. REV. STAT. § 18-1-405(1) (2023).

8. *See id.*; People v. DeGreat, 461 P.3d 11, 16 (Colo. 2020) ("Because DeGreat was not brought to trial within the six-month period set forth in section 18-1-405 and the delay was not properly attributable to DeGreat, the charges against him must be dismissed with prejudice. Accordingly, we now make the rule absolute.").

in court eighteen times over the course of two years. Her case was initially dismissed in September 2018 when, just five days before the fourth jury trial date, the State filed a Motion to Adjourn. The adjournment request was due to the unavailability of the Wisconsin State Laboratory of Hygiene analyst to testify in the trial. The court denied the adjournment request and dismissed Ms. Gideon's case without prejudice, meaning the State was able to refile the case, which it did fifty-four days later.

Here is where my representation began. Less than two months after Ms. Gideon's initial appearance on the newly charged case, we asserted her right to a speedy trial under the Sixth Amendment to the U.S. Constitution.[9] The court then set trial for March 4, 2019, but the same Wisconsin State Laboratory of Hygiene analyst was again unavailable. The court set a new trial date over our objection.

Ms. Gideon's case did not reach a verdict for 1,276 days (over forty-two and a half months) from asserting speedy trial. In those 1,276 days (over forty-two and a half months), Ms. Gideon spent hours in court with thirty court appearances,[10] in front of three different judges and twelve different prosecutors. In total, Ms. Gideon appeared in court forty-five times on a misdemeanor level offense and waited more than six years before a jury of her peers reached a verdict, when the maximum possible sentence on her case was one year in custody.

Not only did we demand a speedy trial, but we filed four written briefs on the issue. One of those briefs analyzed the four factors courts consider in determining whether an accused person has been deprived of their right to a speedy trial under the Sixth Amendment, pursuant to *Barker v. Wingo*: (1) length of the delay, (2) the defendant's assertion of their right, (3) prejudice to the defendant caused by the delay in bringing a speedy trial, and (4) the reasons for the delay.[11] The court denied our motion, finding that, although

9. U.S. CONST. amend. VI. The speedy trial we demanded cited to the Constitution rather than the Wisconsin statute because the Wisconsin statute's remedy for violation of speedy trial only applies to individuals in custody. *See* WIS. STAT. § 971.10(4) (1997). We filed our written speedy trial demand in early February of 2019, and we requested a trial on the record on February 8, 2019.

10. Ms. Gideon's appearance was waived for three of those appearances, mostly due to COVID-19, but she attended twenty-seven appearances on this case before the jury reached a verdict. A number of those appearances were hours long; at least four were entire days spent in court.

11. 407 U.S. 514, 530 (1972). Additionally, we filed a supplemental brief prior to the motion hearing to address a timeliness concern raised by the court because it was concerned that pursuant to Wisconsin caselaw, speedy trial rights under the Sixth Amendment were only an issue that could be

the length of the prosecution was presumptively prejudicial, we had not proven extraordinary circumstances that would justify pretrial dismissal of the complaint. The COVID-19 pandemic created further delays in the case,[12] so

raised on appeal. Specifically, the court was concerned that under a Wisconsin Supreme Court case, *State v. Lemay*, 455 N.W.2d 233 (Wis. 1990), the court would be in error to grant Defense's motion in advance of trial. We argued that the Wisconsin Supreme Court in *Lemay* held "that a pretrial determination that speedy trial rights have been violated can only be made when the evidence shows extraordinary circumstances justifying dismissal with prejudice." *Id.* at 233–34. Therefore, *Lemay* did not stand for the proposition that pretrial determination on the issue of constitutional speedy trial was never possible. *See id.* There also were some major procedural differences between the two cases. In *Lemay*, there was a thirty-seven-month delay between the signing of the criminal complaint and the eventual issuance and service of the arrest warrant for the defendant, and the individual was charged with two counts of sexual assault of a child, very serious felony allegations. *Id.* at 234. In our case, Ms. Gideon was living everyday with the anxiety and concern of a pending criminal case, and she was charged with non-violent, misdemeanor level offenses. After the evidentiary hearing on our motion to dismiss for lack of Sixth Amendment speedy trial, we filed a supplemental brief and written argument.

12. The COVID-19 pandemic creating additional delays was a common problem in courts across the country. *See* Christopher M. Jackson, *COVID-19 Comes to the Colorado Supreme Court*, 99 DENV. L. REV. 295, 305 (2022) ("The COVID-19 pandemic 'wreaked havoc' on Colorado's criminal justice system, and 'trial courts have struggled with effectuating a defendant's statutory right to speedy trial amid this unparalleled public health crisis.'" (quoting People v. Lucy, 467 P.3d 332, 334 (Colo. 2020))); Shelly Bradbury, *"It's a Double Whammy:" Colorado Courts Facing Unprecedented Backlog Now Hobbled by COVID-19 Budget Cuts*, DENV. POST (Dec. 25, 2020, 6:00 AM), https://www.denverpost.com/2020/12/25/colorado-courts-covid-budget-cuts/ [https://perma.cc/DYX4-HKKF] (describing Colorado courts' expected backlog of cases due to reduced staffing and resources prompted by the pandemic); Adam Sullivan, *Vermont Supreme Court Hears 'Speedy Trial' Appeals*, WCAX, https://www.wcax.com/2023/03/21/vermont-supreme-court-hear-speedy-trial-violation-case/ (last updated Mar. 21, 2023, 2:15 PM) ("There is no denying that the pandemic caused a serious interruption to the court system in Vermont, in some cases delaying trials for years."); Robert Lewis, *Justice Delayed: Courts Overwhelmed by Pandemic Backlog*, CAPRADIO (Jan. 20, 2021), https://www.capradio.org/articles/2021/01/20/justice-delayed-courts-overwhelmed-by-pandemic-backlog/; Sylvie Sturm, *State Supreme Court to Weigh in on Long Trial Delays*, S.F. PUB. PRESS (Aug. 4, 2023), https://www.sfpublicpress.org/state-supreme-court-to-weigh-in-on-long-trial-delays/ ("In September 2021, San Francisco Public Defender Mano Raju and four others—including two mothers of adult children whose speedy trial rights were violated—filed a taxpayers' lawsuit to compel San Francisco Superior Court to address the backlog, which began when COVID-19 shelter-in-place orders suspended court proceedings in March 2020."). In a recent article, Brandon Marc Draper argued "the pandemic served as a type of stress test, revealing the inability of the criminal justice system to ensure the criminal jury right. Thus, the pre-pandemic problems, even if eliminated, will not solve the Sixth Amendment problems presented during the pandemic environment." Brandon Marc Draper, *Revenge of the Sixth: The Constitutional Reckoning of Pandemic Justice*, 105 MARQ. L. REV. 205, 206 (2022). I agree with Brandon Marc Draper that the COVID-19 pandemic exposed an already existing problem where the accused's right to a speedy trial was being consistently ignored. However, I do not agree with his solution of amending "the Constitution to create a criminal jury right that allows courts to conduct jury trials via video conference." *Id.*

in July of 2020, we filed a motion to reconsider our motion,[13] which the court also denied.

During the time I represented Ms. Gideon, she was required to pay cash bail; struggled finding employment and was fired from a job shortly after her case was recharged; lived without a driver's license for the time the cases were pending;[14] lost temporary custody of her children in a family court case where her ex-husband relied heavily upon the open criminal charges;[15] and suffered crippling anxiety related to the stress of the ongoing prosecution that manifested in seizures and insomnia. Despite all these pretrial consequences,[16] and the fact that Ms. Gideon would never be able to confront the analyst who tested the sample of her blood in a 0.09[17] test result case—a case where the alcohol content was alleged to be 0.01 above the legal limit—a 2,181-day (over seventy-two and a half months) delay was deemed "not extraordinary" in a country where the right to a speedy trial is constitutionally guaranteed. Although Ms. Gideon's case may seem extreme, people accused of crimes across the country are in similar positions.[18] In Wisconsin, as of December

13. Our motion to reconsider our motion to dismiss for lack of Sixth Amendment speedy trial cited two new factors: (1) continued delay (due in part to COVID-19) and (2) the analyst who tested the blood sample was no longer employed by the Wisconsin State Laboratory of Hygiene, so the State planned to call a supervisor who had not tested the blood sample to testify at trial.

14. Revocation of driving privileges is one of the mandatory minimums if convicted of operating a motor vehicle while intoxicated or operating a motor vehicle with a prohibited alcohol concentration, so, with the penalty of revocation inevitable upon any conviction, it is common for individuals to not pay the fees associated with gaining driving privileges back while the criminal case is pending. *See* WIS. STAT. § 346.63(5)(b) (2015).

15. Prior to this court order, Ms. Gideon had her children 80% of the time.

16. *See* Jenny E. Carroll, *Beyond Bail*, 73 FLA. L. REV. 143, 184–192 (2021) (discussing "monetary costs, social costs, and criminogenic effects" of pretrial conditions of release extensively).

17. Referring to grams or more of alcohol in 100 milliliters of blood.

18. *See* BRIAN J. OSTROM ET AL., TIMELY JUSTICE IN CRIMINAL CASES: WHAT THE DATA TELLS US 6, 8 (2020), https://www.ncsc.org/__data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf (a national study of ninety-one courts in twenty-one states that found that "[t]he average time to disposition is 256 days for a felony case and 193 days for a misdemeanor."); Sturm, *supra* note 12 ("San Francisco has more than 1,100 cases past statutory time limits, and 115 of those defendants are languishing in jail without a conviction."); Charlene, *SF Jury Acquits Man Wrongfully Jailed for 5 Months*, S.F. TIMES (Oct. 29, 2023), https://sftimes.com/sf-jury-acquits-man-wrongfully-jailed-for-5-months/ ("'After several unjust months of incarceration, Bolds's right to a trial ultimately secured his release, highlighting the extreme importance of a speedy trial right,' said Public Defender Mano Raju, whose office continues to fight to protect this right for felony cases and restore the right for people charged with misdemeanors."); JOANNA WEILL ET AL., FELONY CASE DELAY IN NEW YORK CITY: LESSONS FROM A PILOT PROJECT IN BROOKLYN 1 (2021),

31, 2022, 57% of pending felony cases were older than 180 days (six months), with 3,880 felony cases being older than 720 days (twenty-four months).[19] Additionally, 43% of pending misdemeanors were older than 180 days (six months), and 1,235 misdemeanor cases were older than 720 days (twenty-four months).[20]

This Article proceeds in three parts. Part II explains the state of the speedy trial right. For this Article, I analyzed state laws that establish constitutional and statutory rights of the speedy trial in all fifty states.[21] Section II.A

https://www.innovatingjustice.org/sites/default/files/media/document/2021/Case_Delay_Policy_Brief_3.29.2021.pdf ("Despite the constitutional guarantee of a speedy trial, in 2019, for indicted felonies, New York City only met the state's standard for a six-month resolution in about a third of cases."); William Glaberson, *For 3 Years After Killing, Evidence Fades as Suspect Sits in Jail*, N.Y. TIMES (Apr. 15, 2013), https://www.nytimes.com/2013/04/16/nyregion/justice-denied-after-a-murder-in-the-bronx-a-sentence-to-wait.html ("The average wait for a [felony] trial in the Bronx was more than a year, much longer than the state's 'speedy trial' guidelines, which call for most felony crimes to be tried within 180 days."); Samantha Hogan, *Man Who Waited 3 Years for Trial May Change How Maine Views Speedy Trial Rights*, NEWS CTR. ME. (Aug. 15, 2022, 1:48 PM), https://www.newscentermaine.com/article/news/crime/man-who-waited-3-years-for-trial-may-change-how-maine-views-speedy-trial-rights-crime-justice/97-cb25cedd-e3a6-4111-8a37-553ce316a2c6 ("Maine's highest court may hear arguments on whether defendants must show they were harmed by a delayed trial, taking on the right to 'speedy trials' amid a historic backlog of criminal cases across the state."); Reagin von Lehe, *Delay in Justice: Thousands of SC Trials Waiting for Court Dates*, CAROLINA NEWS & REP. (Dec. 6, 2022), https://carolinanewsandreporter.cic.sc.edu/delay-in-justice-thousands-of-sc-trials-waiting-for-court/ ("Only 20% of new cases in South Carolina are resolved in a calendar year, while the remaining 80% roll over into the next . . . . The amount of time it takes from arrest to court disposition—the final decision—was 415 days in 2015. By 2021, the number of days was 592. That's a 177-day increase."); Jan Griffey, *Judge Dismisses Charges for Lack of a Speedy Trial; Man Spent 358 Days in Adams County Jail Without an Indictment*, NATCHEZ DEMOCRAT (Nov. 2, 2023, 5:58 PM), https://www.natchezdemocrat.com/2023/11/02/judge-dismisses-charges-for-lack-of-a-speedy-trial-man-who-spent-358-days-in-adams-county-jail-without-an-indictment/; George Chidi, *Young Thug YSL Trial: Jury Finally Seated After More Than 10 Months*, ROLLING STONE (Nov. 1, 2023), https://www.rollingstone.com/music/music-news/young-thug-ysl-trial-jury-1234868136/ ("Under the court's current speedy trial rules, a jury must be selected within two judicial terms of the start of the trial, or the indictment is voided and the district attorney's office would have to start over from square one. The current judicial term expires Monday."); Colton Molesky, *Opening the Case on Wisconsin's Public Defender Problem*, WMTV (May 30, 2023, 8:33 PM), https://www.nbc15.com/2023/05/31/opening-case-wisconsins-public-defender-problem/ (In Wisconsin, "the median age for a felony case was 183 days in 2019, jumping to 241 in 2021.").

19. *See* WIS. COURTS, AGE OF PENDING SUMMARY 1 (2022), https://www.wicourts.gov/publications/statistics/circuit/docs/agependingstate22.pdf.

20. *Id.*

21. *See infra* Appendix A. This Article does not analyze prompt disposition of intrastate detainer statutes, which are laws that exist in some jurisdictions that allow a person serving a term of imprisonment to request to be tried promptly for any pending untried criminal cases. *See, e.g.*, CONN. GEN.

discusses the history of the speedy trial right rooted in the Sixth Amendment of the United States Constitution and how that right has been interpreted federally. Section II.B examines how states have interpreted and applied that federal constitutional right to state constitutions. Section II.C analyzes the right as it has (or has not) been interpreted through state statutes. Finally, Section II.D proceeds with the treatment of speedy trial in states' rules of criminal procedure, emphasizing the states where speedy trial is non-existent, constructively non-existent, or meaningless, cutting to the chase of the problem that this Article addresses—the often complete deprivation of the speedy trial right for people accused depending on where they are accused.[22] Part III discusses the professional standards that affect speedy trial, exemplifying the problem with the lack of uniformity for this constitutional protection. This Part specifically examines the many states falling far below the American Bar Association's Standards for Criminal Justice. Finally, Part IV proposes reforms, including a proposed statute or rule of criminal procedure for legislatures and state supreme courts that care about the integrity of the right to speedy trial. The proposal includes both strict time limits and a remedy of

STAT. § 54-82c (1963); 730 ILL. COMP. STAT. 5/3-8-10 (2024); IOWA CODE § 821.3 (2008); KY. REV. STAT. ANN. § 500.110 (West 1978); MICH. COMP. LAWS § 780.131 (1989); OHIO REV. CODE ANN. § 2941.401 (LexisNexis 2023); WASH. REV. CODE § 9.98.010 (2021); WIS. STAT. § 971.11 (1997). Similarly, this Article does not analyze prompt disposition of interstate detainer statutes, which are laws that exist in some jurisdictions that allow a person serving a term of imprisonment in another cooperating state to request to be tried promptly for any pending untried criminal cases. *See, e.g.*, HAW. REV. STAT. § 834-1 (1993); 730 ILL. COMP. STAT. 5/3-8-9 (1973); IOWA CODE § 821.1 (2008); MICH. COMP. LAWS § 780.601 (1961); MINN. STAT. § 629.294 (1985); N.J. STAT. ANN. § 2A:159A-3 (West 1958); 42 PA. CONS. STAT. § 9101 (1976). This Article also does not analyze rules of criminal procedure dealing with intra- or interstate issues. *See, e.g.*, ARIZ. R. CRIM. P. 8.3; MASS. R. CRIM. P. 36(d); MICH. CT. R. 6.004(D).

22. *See, e.g.*, Jonah E. Bromwich et al., *Why 3 Liberal New York D.A.s Want to Change a Law Backed by Progressives*, N.Y. TIMES (Apr. 25, 2023), https://www.nytimes.com/2023/04/25/nyregion/discovery-laws-ny.html. New York made a substantial change to the effectiveness of its speedy trial statute in 2019, tying the speedy trial right to the prosecutions' obligation to disclose discovery. *Id.* Specifically, if prosecutors in New York do not meet their discovery deadline, "or if a judge finds that there is missing material, the case can be dismissed for violating a defendant's right to a speedy trial." *Id.* At the time of this Article's publication, prosecution offices are actively trying to reverse some of those changes, including placing "a timeline on defense lawyers to flag and request outstanding case material from prosecutors" which I would argue shifts the discovery obligation of the prosecution to the defense. *See id.* However, the reforms in New York are a perfect example of the problem this Article addresses—the often complete deprivation of the speedy trial right for people accused depending on where they are accused—because New York saw "a 186 percent increase" in dismissals for speedy trial violations after the reforms were implemented in 2022. *Id.* New York judges dismissed 27,108 cases in just ten months. *Id.* Speedy trial rights were being violated in thousands of cases, yet there was no real remedy until the reforms were implemented. *See id.*

dismissal with prejudice when speedy trial violations occur.

II. BACKGROUND OF THE SPEEDY TRIAL RIGHT

This Part proceeds in four sections. Section II.A discusses the state of the law of speedy trials in federal courts, focusing on the Sixth Amendment,[23] the leading Supreme Court decision *Barker v. Wingo*,[24] and the Speedy Trial Act of 1974.[25] Section II.B covers state constitutional provisions on speedy trial. Section II.C discusses state statutes and Section II.D discusses state rules of criminal procedure.

A. Federal

The Sixth Amendment guarantees "the right to a speedy and public trial" in all criminal prosecutions.[26] Additionally, the United States Supreme Court "established that the right to a speedy trial is 'fundamental' and is imposed by the Due Process Clause of the Fourteenth Amendment on the States."[27] "The

23. U.S. CONST. amend. VI.

24. 407 U.S. 514, 515 (1972). *Barker* created an unrealistic standard which the Supreme Court should readdress. *See, e.g.*, Hogan, *supra* note 18 ("No defendant has won a speedy trial claim in the Maine Law Court since 1960 . . . . Defendants are losing, in part, because of an 'elaborate legal test' that Maine courts adopted from the U.S. Supreme Court, which often requires people to show they were harmed by the months- or years-long delay before trial."); Sara Hildebrand & Ashley Cordero, *The Burden of Time: Government Negligence in Pandemic Planning as a Catalyst for Reinvigorating the Sixth Amendment Speedy Trial Right*, 67 VILL. L. REV. 1, 5 (2022) (arguing the burden should shift from the accused to the government "to prove that it did not violate the accused's speedy trial right" under the *Barker* factors); Sandell, *supra* note 2, at 43 ("As case law subsequent to *Barker* indicates, the historical vagueness of the speedy trial guarantee has not been eliminated by use of the balancing test [established in *Barker*]."); Tracz, *supra* note 2, at 26 ("[I]t is time to retire the *Barker* test and replace it with a test that accommodates the flexibility of the Sixth Amendment and the clarity of the [federal Speedy Trial Act]."). However, this Article gives a brief background on the key test established by *Barker*, whereas criticism of the decision will be the subject of a subsequent article. *See infra* notes 33–35 and accompanying text.

25. 18 U.S.C. §§ 3161–74 (2018).

26. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.").

27. *Barker*, 407 U.S. at 515 (citing Klopfer v. North Carolina, 386 U.S. 213, 223 (1967)); *see also Klopfer*, 386 U.S. at 223 ("We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment.").

purpose of the constitutional speedy trial guarantee is to alleviate the burdens [on the accused] of unresolved criminal charges."[28]

The right typically "attaches at the time a defendant is formally accused by a charging document, such as a criminal complaint, information, or indictment."[29] However, in *United States v. Marion*, the Supreme Court acknowledged that the right could attach before formal charges with an arrest.[30] That finding is rooted in the reality that an "[a]rrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."[31] The Court declined to extend the right to any period prior to arrest or formal charges.[32]

In *Barker v. Wingo*, the Court first attempted to identify the criteria used to evaluate the Sixth Amendment right to a speedy trial.[33] It specified four factors which courts should assess in determining whether the accused has been deprived of their right to a speedy trial: (1) length of the delay, (2) the reasons for the delay, (3) the accused's assertion of their right, and (4) prejudice to the accused caused by the delay in bringing a speedy trial.[34] The Court stated that courts should consider these factors together in the form of a balancing test and not as independent criteria.[35] However, the first factor "is to some extent a triggering mechanism."[36] This means that courts must stop their analysis after the first factor if the person accused does not establish a

28. People v. Cox, 528 P.3d 204, 214 (Colo. App. 2023) (emphasis omitted) (citing United States v. MacDonald, 456 U.S. 1, 8 (1982)).

29. Moody v. Corsentino, 843 P.2d 1355, 1363 (Colo. 1993) (en banc) (citing United States v. Marion, 404 U.S. 307, 320 (1971); People v. Bost, 770 P.2d 1209, 1216 (Colo. 1989)).

30. *See Marion*, 404 U.S. at 320–21.

31. *Id.* at 320. Additionally the Court cited to the ABA's Standards Relating to Speedy Trial, which will be explored further in Part III of this Article. *Id.* at 318 n. 10; *see also infra* Part III.

32. *Marion*, 404 U.S. at 321.

33. 407 U.S. 514, 530 (1972). As discussed briefly in footnote 24, I am critical of the *Barker* decision and the unattainable standard *Barker* created, which will be the subject of a subsequent article. For the purposes of this Article, I provide only the basic principles to understand the test that was created in *Barker* because it is the current standard used by all courts in the United States to analyze claims of speedy trial violations.

34. *Id.*

35. *Id.*

36. *Id.*

presumptively prejudicial delay.[37]

Importantly, in a *Barker* analysis, the accused bears the burden to prove a violation of their speedy trial rights.[38] Previously, however, the Court acknowledged that "the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial."[39] The Court's departure in *Barker* from its prior decisions is noteworthy because it is the government's responsibility to provide a speedy trial.

For the first factor, length of delay, *Barker* offers that the circumstances of each case should be considered but that "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."[40] Hence our surprise by the Wisconsin court's denial of our motion in Ms. Gideon's case. Many lower courts set the period between nine months and "a time approaching, at or slightly beyond one year."[41] Additionally, in a subsequent case, the Court noted: "Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."[42] *United States v. MacDonald* adds that courts should consider whether the accused faces the anxiety and stigma of pending criminal charges, so time before a formal criminal charge or arrest is not counted when determining the length of delay.[43]

The second factor, the reason for the delay, requires an analysis of which

37. *Id.* ("Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."); *see, e.g.*, People v. Cox, 528 P.3d 204, 214–15 (Colo. App. 2023) (holding a five-month delay not presumptively prejudicial, so not analyzing remaining *Barker* factors); People v. Sandoval-Candelaria, 321 P.3d 487, 493 (Colo. 2014) (ending the *Barker* analysis after finding a roughly six-month sentencing delay "not presumptively prejudicial because it was 'substantially less than one year'").

38. *See* Moody v. Corsentino, 843 P.2d 1355, 1363 (Colo. 1993) (en banc) (citing People v. Bost, 770 P.2d 1209, 1216 (Colo. 1989)) ("A defendant who contends that this right has been infringed bears the burden of proving the alleged violation.").

39. Dickey v. Florida, 398 U.S. 30, 38 (1970). For this point, the Court referenced the ABA's Standards for Criminal Justice, which this Article explores further in Part III. *Id.* at 38 n.8.

40. *Barker*, 407 U.S. at 530–31.

41. WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE 891 (West, 5th ed. 2009).

42. Doggett v. United States, 505 U.S. 647, 652 n.1 (1992).

43. 456 U.S. 1, 8–9 (1982) ("The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges."); *see also* United States v. Marion, 404 U.S. 307, 320–21 (1971); Dews v. Superior Court, 167 Cal. Rptr. 3d 375, 379 (Cal. Ct. App. 2014) ("A delay of more than one year in a misdemeanor case is presumptively prejudicial for purposes of *Barker*.").

party (the defense, government, or court) is responsible for the delay.[44] The government bears the responsibility to bring the case against the accused person in a reasonably timely fashion.[45] This includes delays by the court system.[46] However, the Court clarified: "A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant."[47]

Regarding the third factor, the person's assertion of their right, the accused person bears the responsibility to assert their right to a speedy trial.[48] The Court explained: "The more serious the deprivation, the more likely a defendant is to complain."[49] Therefore, the Court emphasized that the accused person's assertion of their speedy trial right is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right."[50] Further, "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial."[51]

Finally, with the fourth factor, prejudice to the person accused caused by the delay in bringing a speedy trial, the Court identified three interests that the right seeks to protect: (1) prevention of "oppressive pretrial incarceration;" (2) minimization of the anxiety and concern that weigh upon the accused in their state of limbo awaiting trial; and (3) the limitation of damage to the defense's case.[52] The defense's case suffers severely as time passes. If, to prevail the accused needs to mount an active defense against the charges (as opposed to simply waiting and relying on the prosecution's weaknesses), "the time to [mount the active defense] is when the case is fresh."[53] Delays in bringing a case to trial cause irreparable harm to the accused's ability to mount a strong defense: witnesses disappear, evidence deteriorates, the accused person's and witnesses' memories falter, and facts generally become more

44. *Barker*, 407 U.S. at 531.

45. *See id.* (noting "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.").

46. *See id.*

47. *Id.* (further guiding that, absent these more excusable reasons, courts should weigh deliberate attempts to delay trial "heavily against the government").

48. *Id.* at 528.

49. *Id.* at 531.

50. *Id.* at 531–32.

51. *Id.* at 532.

52. *Id.*

53. Dickey v. Florida, 398 U.S. 30, 37 (1970).

difficult to prove.[54]

After *Barker*, Congress passed the Speedy Trial Act of 1974 to provide guidelines for federal courts.[55] Congress created the statute to protect the rights of those accused and "the public's significant interest in timely justice," all while reducing the cost of the criminal legal process.[56] Congress intended to cure the recurring issue of excessive pretrial delays in federal courts.[57] The speedy trial right in the federal statute automatically triggers on "the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."[58] The statute requires a trial within seventy days of that triggering date.[59] Additionally, the statute has a separate provision for speedy trial rights after arrest or formal service of a summons, but before formal charging.[60] Specifically, the statute requires charges be "filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges."[61]

The statute applies to all federal criminal cases[62] but includes separate provisions for an accused person in custody and an accused person "designated by the attorney for the Government as being of high risk."[63] Specifically, the statute requires those cases to be given priority and the trial to "commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government."[64] If the trial does not begin within ninety days by no fault of the respective party,

54. *See generally* Williams v. United States, 250 F.2d 19, 23–24 (D.C. Cir. 1957) (noting that the "[p]assage of time makes proof of any fact more difficult").

55. 18 U.S.C. §§ 3161–3174 (2018).

56. Hopwood, *supra* note 2, at 709.

57. *Id.*

58. 18 U.S.C. § 3161(c)(1) (2018).

59. *Id.* This seventy-day time limit has been criticized as being too short. Doyel, *supra* note 2, at 27 ("The severe time limitations of the Act, virtually unlimited pre-accusation delay, and nondiscoverability of names and addresses of witnesses combine to give an unfair advantage to the prosecutor." (footnotes omitted)).

60. 18 U.S.C. § 3161(b) (2018).

61. *Id.* That timeline can be extended for an additional thirty days if the person is charged with a felony in a district where no grand jury is in session during the first thirty day period after summons or arrest. *Id.*

62. *See id.* §§ 3161–74.

63. *Id.* § 3164(a).

64. *Id.* § 3164(b).

then the court shall automatically review the conditions of release.[65] For those in custody who are not tried within the ninety days, the remedy is release from custody.[66]

The statute requires dismissal as the general remedy for violation of speedy trial in federal court,[67] however the court has discretion to dismiss with or without prejudice.[68] The statute includes the following factors that the court must consider when determining the appropriate remedy: "[T]he seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice."[69] Additionally, unlike any of the state laws dealing with speedy trial, the federal statute includes provisions for specific sanctions the court may impose on the defense attorney or prosecutor for violating an accused person's speedy trial rights.[70]

Federal courts, both at the district and circuit level, actively thwart the federal statute's requirements.[71] A primary avenue for so doing is through "ends of justice" continuances permitted by 18 U.S.C. § 3161(h)(7)(A),[72] and other broad categories of excluded time periods, such as any period of delay resulting from "other proceedings concerning the defendant[;]"[73] "the absence or unavailability of the defendant or an essential witness[;]"[74] or a continuance granted by the judge's own motion at the request of the accused or the prosecution "if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."[75] The statute provides too much discretion to the court to extend the time limit, a problem mirrored in

65. *Id.* § 3164(c).
66. *Id.*
67. *Id.* § 3162(a)(1) (stating the case "shall be dismissed").
68. *Id.*
69. *Id.*
70. *See id.* § 3162(b).
71. *See* Hopwood, *supra* note 2, at 709 ("[A]lthough the Act categorically applies in every federal criminal case, it has been effectively marginalized by federal district and circuit courts."); *see also* Tracz, *supra* note 2, at 14–15 (citing United States v. Rush, 738 F.2d 497, 508 (1st Cir. 1984); United States v. Jones, 56 F.3d 581, 586 (5th Cir. 1995); United States v. Lattany, 982 F.2d 866, 868 (3d Cir. 1992)). *But see* Doyel, *supra* note 2, at 48 (arguing courts should have a more flexible approach when granting continuances requested by the defense).
72. 18 U.S.C. § 3161(h)(7)(A) (2018); Hopwood, *supra* note 2, at 742–43.
73. 18 U.S.C. § 3161(h)(1) (2018).
74. *Id.* § 3161(h)(3)(A).
75. *Id.* § 3161(h)(7)(A).

many state statutes and rules of criminal procedure.[76] Interestingly, the federal statute has more categories for excludable timeframes than any of the state statutes and rules of criminal procedure.[77] A solution to this problem is to restrict flexibility for the courts regarding these categories of excluded time.[78] My proposal has four categories of excluded times, compared to the thirteen in the federal statute.[79] Additionally, my proposal does not have sweeping catch-all categories like "ends of justice" continuances or "other proceedings concerning the defendant."[80]

B. State Constitutional

All but eight states[81] include the explicit right to a speedy trial in their state constitutions by specifically referencing a speedy trial. To put it differently, 84% of states view the right as sufficiently fundamental to replicate in their constitutions, even with the Sixth Amendment's obvious application to the states.[82] Nevada and New York's constitutions do not include any provisions on speedy trial,[83] but instead provide for it in statute.[84]

76. *See infra* Appendices B, C.

77. *See infra* Appendix B.

78. Discussed *infra* Part IV.

79. *See infra* Appendix B.

80. 18 U.S.C. § 3161(h)(1) (2018); *id.* § 3161(h)(7)(A).

81. *See infra* Appendix A. The states that do not include the explicit right to a speedy trial in their state constitutions are Indiana, Massachusetts, Nevada, New Hampshire, New York, North Carolina, Oregon, and West Virginia. *See infra* Appendix A. Note that the Indiana, Massachusetts, New Hampshire, North Carolina, Oregon, and West Virginia constitutions provide for trial "without delay" rather than a "speedy" trial, whereas the Nevada and New York constitutions lack any provision entirely. *Id.*

82. *See infra* Table I.A.

83. *See* Oberle v. Fogliani, 420 P.2d 251, 252 (Nev. 1966) ("The Nevada Constitution does not contain a speedy and public trial provision. The Sixth Amendment to the Federal Constitution does. It reads: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.' However, this part of the Sixth Amendment has not been extended to state court cases . . . ."); N.Y. CONST. art. I.

84. *Oberle*, 420 P.2d at 252 ("The right to a speedy trial in Nevada is legislatively given."); NEV. REV. STAT. § 178.556 (1991); N.Y. CRIM. PROC. LAW §§ 30.20–.30 (McKinney 2020).

Massachusetts,[85] New Hampshire,[86] North Carolina,[87] Oregon,[88] and Indiana's[89] constitutions all reference trial without "delay" rather than a right to speedy trial. None use language that mirrors the Sixth Amendment right, which naturally leaves open an interpretation question. Namely, is a trial without delay the same as the right to a speedy trial guaranteed by the Sixth Amendment?

The Kentucky constitution does not specifically refer to a "speedy" trial in its text, yet it does imbue the title of one section with the words "speedy trial."[90] The section states: "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or *delay*."[91]

West Virginia's constitution blends the models discussed thus far. It includes a section titled: "Courts open to all – Justice administered speedily."[92] That section states: "The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or *delay*."[93] Additionally, the West Virginia constitution includes a

85. MASS. CONST. pt. I, art. XI. The pertinent part of the Massachusetts Constitution says: "[Every subject of the commonwealth] ought to obtain right and justice freely, . . . completely, and without any denial; *promptly, and without delay*; conformably to the laws." *Id.* (emphasis added).

86. N.H. CONST. pt. I, art. XIV. The relevant part of New Hampshire's constitution says:

> Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, . . . completely, and without any denial; *promptly, and without delay*; conformably to the laws.

Id. (emphasis added).

87. N.C. CONST. art. I, § 18. The pertinent part of the North Carolina Constitution says: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or *delay*." *Id.* (emphasis added).

88. OR. CONST. art. I, § 10. The Oregon constitution does not specifically refer to a "speedy" trial, but it does say: "[J]ustice shall be administered, openly and without purchase, completely and *without delay*, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation." *Id.* (emphasis added).

89. IND. CONST. art. I, § 12. The Indiana Constitution does not specifically refer to a "speedy" trial, but it does say: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and *without delay*." *Id.* (emphasis added).

90. KY. CONST. § 14 ("Right of judicial remedy for injury – Speedy trial.").

91. *Id.* (emphasis added).

92. W. VA. CONST. art. III, § 17.

93. *Id.* (emphasis added).

separate section that guarantees "[t]rials of crimes, and of misdemeanors, . . . shall be . . . public, *without unreasonable delay*."[94]

Table I.A State Constitutional Speedy Trial[95]

State Constitution Includes "Speedy Trial"	**State Constitution Includes Provision on Trial Without "Delay"**	**Speedy Trial Not Included in the State Constitution – Only a Statutory Right**
42 (84%)	6 (12%)	2 (4%)

Importantly, like the Sixth Amendment speedy trial right, the state constitutional provisions referenced in Table I.A simply assert the existence of the right. None provide timelines or remedies for noncompliance with the right.[96] Therefore, state statutes and rules of criminal procedure, the topics of Sections II.C and II.D, are crucial.

C. State Statutory

State statutes vary considerably with how they codify a speedy trial right, if at all. Yet statutory provisions relating to this right are essential given that no constitutional provision, state or federal, includes either a time limit or a remedy.[97]

Fourteen states have no statutes to govern speedy trials.[98] Of these

94. *Id.* § 14 (emphasis added).

95. *See infra* Appendix A for citations to the state constitutional provisions.

96. *See infra* Appendices D, E; *e.g.*, MASS. CONST. pt. I, art. XI.

97. *See generally* Simakis v. Dist. Court of Fifth Judicial for Eagle Cnty., 577 P.2d 3, 4 (Colo. 1978) (en banc) ("Statutes relating to speedy trial are intended to render these constitutional guarantees more effective.").

98. *See infra* Appendix A. Those fourteen states are Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Pennsylvania, South Carolina, and Washington. *Id.* Interestingly, Arkansas used to have a speedy trial statute that it repealed on March 2, 2023 with H.B. 1287. *See* ARK. CODE ANN. § 16-96-108, *repealed by* 2023 Ark. Acts 177, 11–12 ("When a person has been arrested and brought before the city court, or the judge thereof, charged with an offense within the jurisdiction of the court, he or she shall be immediately tried or, at the discretion of the judge, held to bail for his or her future appearance for trial, or discharged from custody."). Arkansas still has a statute titled "Speedy trial," but it has nothing to do with the speedy trial right as discussed in this Article. *See* ARK. CODE ANN. § 16-96-506 (1947) ("All appeals to the

fourteen states, Alaska, Arizona, Arkansas, Florida, Hawaii, Iowa, Massachusetts, Minnesota, New Mexico, Pennsylvania, and Washington have promulgated rules of criminal procedure addressing the speedy trial right (discussed in Section II.D).[99] Concerningly, Delaware,[100] Maine, and South Carolina have neither a statute nor a rule of criminal procedure, though all include a state constitutional provision with the right.[101] In other words, those states have a constitutional right with no explicit guidance for its courts regarding how or when to enforce the right.[102] Additionally, New Hampshire[103] and Rhode Island[104] only have a statutory speedy trial right for victims in sex cases of a certain age. The statues are clear that the statutory right is established for the victim, and does not afford any additional rights for the person accused.[105]

circuit court in criminal cases shall stand for trial at any time after the transcript and papers are, or should have been, filed in the circuit court as provided in this subchapter.").

99. *See infra* Appendix A (citing states' rules of criminal procedure); *infra* Section II.D.

100. However, Delaware does include guidance from the court in their Judicial Branch Operating Procedures. The Operating Procedures provide guidance, but "are subordinate to the Judicial Branch's duty to comply with the Constitution, statutes, Court-specific rules, and its overarching commitment to do justice in the diverse procedural circumstances in which cases arise." *Operating Procedures: Introduction*, https://courts.delaware.gov/aoc/operating-procedures/op-intro.aspx (last visited Apr. 5, 2024). Additionally, courts are able to depart from the Operating Procedures "[w]hen the need to do justice requires[.]" *Id.* The pertinent Operating Procedures are locatedin Appendices D-2 and D-3. *See* DEL. COURTS, OPERATING PROCEDURES: POLICY ON SPEEDY TRIAL GUIDELINES app. D-2, https://courts.delaware.gov/forms/download.aspx?id=83548; *id.* at app. D-3, https://courts.delaware.gov/forms/download.aspx?id=83558.

101. *See infra* Appendix A (citing states' rules of criminal procedure and constitutional provisions).

102. *See infra* Table I.B.

103. N.H. REV. STAT. ANN. § 632-A:9 (2003) (affording a speedy trial right to victims in sex cases where the victim is sixteen and under, or sixty-five and over).

104. 11 R.I. GEN. LAWS § 1-37-11.2 (1988) (affording a speedy trial right to victims in sex cases where the victim is fourteen and under, or sixty-five and over).

105. N.H. REV. STAT. ANN. § 632-A:9 (2003) ("This provision establishes a right to a speedy trial for the victim and shall not be construed as creating any additional rights for the defendant."); 11 R.I. GEN. LAWS § 1-37-11.2 (1988) ("This provision establishes a right to a speedy trial to the victim and shall not be construed as creating any additional rights to the defendant.").

TABLE I.B STATE SPEEDY TRIAL RIGHT[106]

State Constitutional Provision for Speedy Trial Right	Speedy Trial Not Included in the State Constitution – Only a Statutory Right	State Statute and/or Rule of Criminal Procedure for Speedy Trial Right	No State Statute or Rule of Criminal Procedure for Speedy Trial Right – Only State Constitutional Provision
48 (96%)	2 (4%)	47 (94%)	3 (6%)

In contrast, Alabama, Colorado, Indiana, Kentucky, Michigan, New Jersey, North Dakota, and Wyoming have both statutes and rules of criminal procedure[107] (and thus are examined here and in Section II.D), although neither Alabama's statute[108] nor rule of criminal procedure[109] provides a definition of speedy trial, specific timeframe, or remedy for violating the right.[110] Similarly, neither Kentucky's statute[111] or rule of criminal procedure[112] includes a definition or remedy for violation.[113] Finally, neither North Dakota's statute[114] nor rule of criminal procedure[115] has a definition of speedy trial, but its rule of criminal procedure does list discretionary remedies.[116] Alarmingly, Kansas responded to the COVID-19 pandemic by completely suspending the application of its speedy trial statute until March 1, 2024.[117] Of the states with speedy trial statutes, the statutes vary tremendously, most notably with respect to

106. See *infra* Appendix A for citations.
107. *See infra* Appendix A.
108. ALA. CODE § 15-25-6 (2022).
109. ALA. R. CRIM. P. 8.1–8.3.
110. *See infra* notes 214–221 and accompanying text.
111. KY. REV. STAT. ANN. § 421.510 (West 2020).
112. KY. R. CRIM. P. 9.02.
113. *See infra* notes 226–228 and accompanying text.
114. N.D. CENT. CODE § 29-01-06 (2009).
115. N.D. R. CRIM. P. 48(b).
116. *See id.*
117. KAN. STAT. ANN. § 22-3402(j) (2023) ("The provisions of this section shall be suspended until March 1, 2024, in all criminal cases.").

when the right applies,[118] the timeframe,[119] the court's discretion, and the remedy.[120]

In some states the right automatically triggers by entry of a not guilty plea,[121] at arraignment,[122] or at the time of "arrest or the service of summons."[123] In Vermont, the automatic right applies only to people accused and held without bail in cases with offenses punishable by anything less than death or life imprisonment;[124] thus the right is tied to a decision to deny bail.[125] In some automatic right states, the triggering event varies depending on the offense level.[126] Maryland is unique in that the trial date must "be set within 30 days after the earlier of: (i) the appearance of counsel; or (ii) the first appearance of the [accused.]"[127] Many states with an automatic right include a separate provision for speedy trial rights after arrest and before formal charging.[128] Ohio has separate provisions for speedy trial rights after formal

118. *See infra* Table I.C.

119. *See infra* Table I.D.

120. *See infra* Table I.E.

121. *See, e.g.*, COLO. REV. STAT. § 18-1-405(1) (2021); MONT. CODE ANN. § 46-13-401 (1989). In Montana, the automatic trigger of a not guilty plea is only for misdemeanors, but neither statute has any guidance on the the triggering event for felonies. *Id.* § 46-1-506; § 46-13-401.

122. *See* KAN. STAT. ANN. § 22-3402(a)–(b) (2023); MISS. CODE ANN. § 99-17-1 (1976); NEB. REV. STAT. § 29-1207(1) (2010); NEV. REV. STAT. § 178.556 (1991); N.J. STAT. ANN. § 2A:162-22 (West 2017); N.Y. CRIM. PROC. LAW §§ 30.20–.30 (McKinney 2020); S.D. CODIFIED LAWS § 23A-44-5.1(2) (2021); TENN. CODE ANN. § 40-18-103 (1981); W. VA. CODE §§ 62-3-1, -21 (2005).

123. OHIO REV. CODE ANN. § 2945.71(A) (LexisNexis 2022); *see also* OKLA. STAT. tit. 22, §§ 13, 812.1, 812.2 (1999) (time of arrest only); OR. REV. STAT. § 135.746(1) (2014) (date of filing the charging document only).

124. *See* VT. STAT. ANN. tit. 13, § 7553b(a) (1993).

125. *See id.*

126. *See, e.g.*, CAL. PENAL CODE § 1382 (West 2009); IDAHO CODE § 19-3501 (2004); MONT. CODE ANN. § 46-1-506 (2007); § 46-13-401 (1989); VA. CODE ANN. § 19.2-243 (2009). In California, arraignment in felony cases automatically triggers the right, but in misdemeanor and infraction cases either arraignment or entry of a plea automatically triggers that right (whichever occurs later). CAL. PENAL CODE § 1382(a)(2)–(3) (West 2009).

127. MD. CODE ANN., CRIM. PROC. § 6-103(a) (West 2023).

128. *See* CAL. PENAL CODE § 1382(a)(1) (West 2009) (establishing fifteen-day timeframe "[w]hen a person has been held to answer for a public offense and an information [has not] been filed" against them in California); N.J. STAT. ANN. § 2A:162-22 (West 2017) (stating that defendants can be held in custody for ninety days before formal charging, which can be extended forty-five days by motion from the prosecutor "[i]f the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to indict the eligible defendant . . . was not due to unreasonable delay by the prosecutor."); IDAHO CODE § 19-3501(1) (2004); NEV. REV. STAT. § 178.556(1) (1991) ("If no indictment is

charging but before the preliminary hearing on felony matters.[129] Other states require an affirmative assertion of the right.[130] Connecticut has somewhat of a hybrid approach, where the statute has the timeframes set automatically, but for the accused person to get the remedy of dismissal they must bring a speedy trial motion.[131] Illinois also has a hybrid approach where, for persons accused held in custody, the custody date triggers the right; persons accused out of custody must demand the right in writing.[132] Although Louisiana's statute requires the accused person to file a motion for a speedy trial accompanied by an affidavit, the statute does include separate timeframes for when formal charging must occur after an arrest.[133] Finally, some states are silent as to when the right applies.[134] The states that are silent are also the states where

found or information filed against a person within 15 days after the person has been held to answer for a public offense which must be prosecuted by indictment or information, the court may dismiss the complaint."); OR. REV. STAT. § 135.745 (2023) ("When a person has been held to answer for a crime, if an indictment is not found against the person within 30 days . . . the court shall order the prosecution to be dismissed, unless good cause to the contrary is shown."); S.D. CODIFIED LAWS § 23A-44-3 (1978); VA. CODE ANN. § 19.2-242 (2018); W. VA. CODE § 62-2-12 (2005).

129. *See* OHIO REV. CODE ANN. §§ 2945.71–.73 (LexisNexis 2022).

130. *See* GA. CODE ANN. §§ 17-7-170 to -171 (2011); KY. REV. STAT. ANN. § 421.510 (West 2020) (requiring the prosecution to bring a speedy trial motion in cases "where the victim is less than sixteen (16) years old and the crime is a sexual offense"); LA. CODE CRIM. PROC. ANN. art. 701(D) (2021); MO. REV. STAT. § 545.780 (1986) ("If defendant announces that he is ready for trial and files a request for a speedy trial, then the court shall set the case for trial as soon as reasonably possible thereafter."); N.C. GEN. STAT. § 15-10 (1913) ("[U]pon his prayer in open court to be brought to his trial"); WIS. STAT. § 971.10(2)(a) (1997). In Wisconsin, the right in felony cases requires affirmative demand by either party "in writing or on the record," but in misdemeanor cases the right is automatic from the date of initial appearance. *See id.* § 971.10(1)–(2)(a). However, I have included Wisconsin in this footnote because the only remedy for speedy trial violations, as discussed later in this section, is release from custody. *See id.* § 971.10(4). Therefore, the vast amount of cases where speedy trial statutes have any affect are felony cases because the person accused is more likely to be in custody. *See id.* In Nevada, when the prosecution wants to assert speedy trial, the statute requires a demand. *See* NEV. REV. STAT. § 174.511 (1983) ("The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment."). However, for the accused, the arraignment automatically triggers the right, as discussed previously. *See id.* § 178.556.

131. *See* CONN. GEN. STAT. § 54-82m (2007).

132. *See* 725 ILL. COMP. STAT. 5/103-5 (2023).

133. *See* LA. CODE CRIM. PROC. ANN. art. 701(D) (2021).

134. *See* ALA. CODE § 15-25-6 (2022) (requiring a speedy trial "where the victim or a witness to the offense is a child or a protected person"); IND. CODE § 35-34-1-4 (1983); MICH. COMP. LAWS § 768.1 (1927); N.H. REV. STAT. ANN. § 632-A:9 (2003) (affording a speedy trial right to victims in sex cases where the victim is sixteen and under, or sixty-five and over); N.D. CENT. CODE § 29-01-06 (2009); 11 R.I. GEN. LAWS § 1-37-11.2 (1988) (affording a speedy trial right to victims in sex cases where the victim is fourteen and under, or sixty-five and over); TEX. CODE CRIM. PROC. ANN. arts.

no time limit is set by the statute.[135] Although Michigan's primary speedy trial statute[136] is silent as to when the right applies, Michigan has a separate statute that permits release for persons held in custody and not tried in a timely manner.[137] For that statute, the date the person was first put in custody automatically triggers the right.[138]

TABLE I.C WHEN THE STATE STATUTORY SPEEDY TRIAL RIGHT APPLIES[139]

Speedy Trial Right is Automatically Triggered[140]	**Speedy Trial Right Must be Asserted**[141]	**Other**[142]	**The Statute is Silent as to When the Right Applies**[143]
18 (36%)	6 (12%)	4 (8%)	22 (44%)

1.05, 17.151, 28.061 (West 2005); UTAH CODE ANN. § 77-1-6(1)(f) (West 1980); WYO. STAT. ANN. § 7-11-203 (1987). Indiana and Wyoming's statutes are silent as to when the right applies, but their rules of criminal procedure provide more direction, as analyzed in Section III.D. *See* IND. R. CRIM. P. 4; WYO. R. PRAC. & P. 48(b)(2).

135. *See supra* note 134 for statute citations.

136. MICH. COMP. LAWS § 768.1 (1927).

137. *Id.* § 767.38.

138. *See id.* Interestingly, Michigan's rules of criminal procedure also create a standard for defendants held in custody and not tried in a timely manner. MICH. CT. R. 6.004(C). The rule of criminal procedure has the same timeframe as the statute for felony cases but actually has a shorter timeframe than the statute for individuals charged with misdemeanors. *See id.* (the rule permits 180 days for felony cases, but only twenty-eight days for misdemeanor cases, whereas the statute allows for six months in all cases where the accused person is in custody).

139. *See supra* notes 121–138 and accompanying text.

140. The states where the state statute has the speedy trial right automatically triggered are California, Colorado, Idaho, Kansas, Maryland, Mississippi, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Vermont, Virginia, and West Virginia. *See supra* notes 121–129 and accompanying text.

141. The states where the state statute requires the speedy trial right to be asserted are Georgia, Kentucky, Louisiana, Missouri, North Carolina, and Wisconsin. *See supra* note 130 and accompanying text.

142.The states included in this other category are Connecticut, Illinois, Michigan, and Montana. *See supra* notes 121, 131–132, 136–138 and accompanying text.

143. The states where the state statute is silent as to when the right applies are Alabama, Indiana, New Hampshire, North Dakota, Rhode Island, Texas, Utah, and Wyoming. *See supra* note 134 and accompanying text. Additionally, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Pennsylvania, South Carolina, and Washington are included because those states do not have a state statute that addresses the speedy trial right. *See infra* Appendix A for citations.

Timeframes vary considerably between the statutes.[144] Some statutes have no timeframes listed.[145] Others have relatively short timeframes.[146]

144. *See infra* Table I.D.

145. *See* ALA. CODE § 15-25-6 (2022); IND. CODE 35-34-1-4 (1983); MICH. COMP. LAWS § 768.1 (1948) ("The people of this state and persons charged with crime are entitled to and shall have a speedy trial and determination of all prosecutions and it is hereby made the duty of all public officers having duties to perform in any criminal case, to bring such case to a final determination without delay except as may be necessary to secure to the accused a fair and impartial trial."); MO. REV. STAT. § 545.780 (1986) ("If defendant announces that he is ready for trial and files a request for a speedy trial, then the court shall set the case for trial as soon as reasonably possible thereafter."); N.H. REV. STAT. ANN. § 632-A:9 (2003) (affording a speedy trial right to victims in sex cases where the victim is sixteen and under, or sixty-five and over); N.C. GEN. STAT. § 15-10 (1913) (requiring the person to be "tried at the second term of the court," but term of court is undefined in the North Carolina statutes); N.D. CENT. CODE § 29-01-06 (2009); 11 R.I. GEN. LAWS § 1-37-11.2 (1988) (affording a speedy trial right to victims in sex cases where the victim is fourteen and under, or sixty-five and over); TENN. CODE ANN. § 40-18-103 (1981); TEX. CODE CRIM. PROC. ANN. arts. 1.05, 28.061 (West 1997); UTAH CODE ANN. § 77-1-6(1)(f) (West 1980); WYO. STAT. ANN. § 7-11-203 (1987). In Indiana and Wyoming, the rules of criminal procedure establish the timeframe. *See* IND. R. CRIM. P. 4; WYO. R. PRAC. & P. 48(b)(2). In Tennessee, the statute includes a timeline only for Class X felonies, no longer a classification in Tennessee. *See* TENN. CODE ANN. §§ 39-1-701 to -704, *repealed by* 1989 Tenn. Pub. Acts, ch. 591, § 1; *see also* TENN. CODE ANN. § 40-18-103 (1981). Class X felonies were eleven of the most serious crimes, including murder in the first and second degree, criminal sexual conduct in the first degree, aggravated kidnapping, armed robbery, aggravated arson, conspiracy, assault with intent to commit murder in the first degree, drug offenses, willful injury by explosives, and assault from ambush with a deadly weapon. David L. Raybin, *The Class X Felonies Act of 1979; An Analysis*, 14 TENN. B. J. 25, 25–28 (1979), https://www.nashvilletnlaw.com/assets/pdf/The-Class-X-Felonies-Act-of-1979_Analysis.pdf. Texas does have timeframes that require release for accused in custody, TEX. CODE CRIM. PROC. ANN. art. 17.151 (West 2005), but I included Texas in this footnote because its main speedy trial statutes include no timeframes. *See See* TEX. CODE CRIM. PROC. ANN. arts. 1.05, 17.151, 28.061 (West 2005).

146. *See* CAL. PENAL CODE § 1382(a)(2), (a)(3)(A) (West 2009) (thirty days for a misdemeanor or infraction offense if the person accused is in custody; forty-five days for a misdemeanor or infraction offense if the person accused is out of custody; and sixty days for a felony offense); 725 ILL. COMP. STAT. 5/103-5(a)–(b) (2023) (120 days for people in custody and 160 days for people out of custody); KY. REV. STAT. ANN. § 421.510(1) (West 2020) (ninety days after the prosecution files a speedy trial motion and the court grants the motion, but only in cases "where the victim is less than sixteen (16) years old and the crime is a sexual offense"); LA. CODE CRIM. PROC. ANN. art. 701(D)(a)–(b) (2021) (after filing a motion for speedy trial, the timeframes are as follows: 120 days for felony offenses if the accused is in custody, 180 days for felony offenses if the accused is out of custody, thirty days for misdemeanor offenses if the accused is in custody, and sixty days for misdemeanor offenses if the accused is out of custody); NEV. REV. STAT. §§ 174.511, 178.556 (1991); N.Y. CRIM. PROC. LAW § 30.30(2)(c), (7)(c) (McKinney 2020) (New York has multiple timeframes ranging from fifteen days for a person in custody accused of one or more misdemeanor(s) that have a maximum penalty of no more than three months, to six months for a person out of custody accused of at least one felony); OHIO REV. CODE ANN. § 2945.71 (LexisNexis 2022) (Ohio has multiple timeframes ranging from ten

Finally, other statutes have incredibly long timeframes.[147] Of statutes that include timeframes, the range is from ten days for a minor misdemeanor offense where the person accused is in custody in Ohio[148] to three years for a felony offense in Oregon.[149] Most of the statutes that exist with timeframes included have a timeframe of 180 days (six months), at least for one category of cases.[150] This is an important consideration when thinking about the

days for a person in custody accused of a minor misdemeanor to 270 days for a person out of custody accused of a felony); VT. STAT. ANN. tit. 13, § 7553b (1993) (sixty days but reserved for people accused held in custody without bail for an offense punishable by less than death or life imprisonment); VA. CODE ANN. § 19.2-243 (2009); W. VA. CODE §§ 62-3-1, -21 (2005); WIS. STAT. § 971.10(1)–(2) (1997) (sixty days for a misdemeanor case after the initial appearance in court, and ninety days for a felony case after a speedy trial demand is made in writing or on the record). In West Virginia the timeframes are set by "regular terms of such court." W. VA. CODE. § 62-3-21 (2005). The definition for regular term of court is not contained in the statute, but the terms begin in January, May, and September. *See* Stephen P. Swisher, *Criminal Law—Speedy Trial—The Three Term Rule*, 73 W. VA. L. REV. 184, 184 (1971). Therefore, each year has three terms that are four months each. *Id.* The remedy for the shorter timeframe (one term) is discharge from custody, and the remedy for the longer timeframe (three terms) is dismissal with prejudice. *See* W. VA. CODE §§ 62-3-1, -21 (2005).

147. *See* CONN. GEN. STAT. § 54-82m (2007); GA.CODE ANN. § 17-7-170 to -171 (2011); MISS. CODE ANN. § 99-17-1 (1976) ("Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned."); OKLA. STAT. tit. 22, § 812.1 (1999) (twelve months for any crime if the person accused is in custody, and eighteen months for a felony level offense if the person accused is out of custody); OR. REV. STAT. § 135.746(1)(a)–(b) (2014) (two years for misdemeanor-level offenses and three years for felony-level offenses). In Connecticut, the timeframe is twelve months from the date of arrest or filing of the charge(s) (whichever is later) when the person accused is out of custody, and eight months from the date of arrest or filing of the charge(s) (whichever is later) when the person accused is in custody. CONN. GEN. STAT. § 54-82m (2007). However, the Connecticut statute goes on to say if "a trial is not commenced within thirty days of a motion for a speedy trial made by the defendant at any time after such time limit has passed, the information or indictment shall be dismissed." *Id.* Therefore, for an accused person to get the remedy of dismissal in Connecticut, the eight- or twelve-month timeframe must pass and then they must bring a motion on the violation. *Id.* In Georgia, the timeframes are set by court terms. *See* GA. CODE ANN. § 17-7-170 to -171 (2011). Court terms are set by § 15-6-3, and the average term is six months, but in some counties the terms are as short as two months. GA. CODE ANN. § 15-6-3 (2021). The speedy trial statutes require a trial within two terms for a noncapital case, and three terms for a capital case after the written speedy trial demand is filed. GA. CODE ANN. § 17-7-170 to -171 (2011).

148. *See* OHIO REV. CODE ANN. § 2945.71(C)(1) (LexisNexis 2022).

149. *See* OR. REV. STAT.§ 135.746(1)(b) (2014).

150. *See* COLO. REV. STAT. § 18-1-405(1) (2021); IDAHO CODE § 19-3501 (2004); KAN. STAT. ANN. § 22-3402(a)–(b) (2023) (150 days if the person is in custody for that case only, 180 days for all other cases); MD. CODE ANN., CRIM. PROC. § 6-103(a)(2) (West 2023); MICH. COMP. LAWS § 767.38 (1948) ("Every person held in prison upon an indictment shall, if he require it, be tried at the next term of court after the expiration of 6 months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court that the witnesses on

Wisconsin statistics in the Part I.[151] Eight states have agreed with a 180-day timeframe,[152] and yet in Wisconsin, as of December 31, 2022, most pending felony cases and 43% of pending misdemeanor cases have exceeded that timeframe.[153]

behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident."); MONT. CODE ANN. § 46-13-401 (1989) (six months for misdemeanor cases from the entry of the not guilty plea, no timeline for felony cases); NEB. REV. STAT. § 29-1207(1) (2010); N.J. STAT. ANN. § 2A:162-22(2)(a) (West 2017); S.D. CODIFIED LAWS § 23A-44-5.1(1) (2021). Although New Jersey's statute has a 180-day timeframe after indictment, in practice the timeframe would be much longer because: (1) the statute allows for ninety days in custody with a possible extension of forty-five days before indictment; (2) the statute in subsection (b) has a long list of time periods that would be excluded from the timeframe calculation; and (3) the statute allows the court to "allocate an additional period of time in which the eligible defendant's trial shall commence" after the 180 days if the court makes certain findings. *See* N.J. STAT. ANN. § 2A:162-22 (1)(a)–(b) (West 2017). The length of the additional period the court could allocate after the 180 days is not defined in the statute, so presumably the court could allocate years of additional time. *See id.*

151. *See supra* notes 19–20 and accompanying text.

152. Those eight states are Colorado, Idaho, Kansas, Maryland, Michigan, Nebraska, New Jersey, and South Dakota. *See supra* note 150.

153. *See supra* notes 19–20 and accompanying text.

TABLE I.D STATE STATUTORY TIMEFRAME[154]

Statutory Timeframe < 180 Days (Six Months)[155]	**Statutory Timeframe of 180 Days (Six Months)**[156]	**Statutory Timeframe > 180 Days (Six Months)**[157]	**Other**[158]	**No Statutory Timeframe**[159]
7 (14%)	5 (10%)	5 (10%)	5 (10%)	28 (56%)

154. *See* sources cited *supra* notes 144–153 and accompanying text.

155. The states with a state statutory timeframe of less than 180 days (six months) are California, Illinois, Louisiana, Nevada, New York, Virginia, and Wisconsin. *See* sources cited *supra* note 146 and accompanying text.

156. The states where with a state statutory timeframe of 180 days (six months) are Colorado, Idaho, Maryland, Nebraska, and South Dakota. *See* sources cited *supra* note 150 and accompanying text.

157. The states with a state statutory timeframe of more than 180 days (six months) are Connecticut, Mississippi, New Jersey, Oklahoma, and Oregon. *See* citations cited *supra* note 147 and accompanying text. Although New Jersey's statute has a 180-day timeframe after indictment, in practice the timeframe is much longer. *See supra* note 150. Therefore, New Jersey is included in this column.

158. The states included in this other category are Georgia, Kansas, Montana, Ohio, and West Virginia. *See supra* notes 146, 148, 150. In Georgia, the timeframes are set by court terms. *See* GA. CODE ANN. § 17-7-170 to -171 (2011). Court terms are set by § 15-6-3, and the average term is six months, but in some counties the terms are as short as two months. GA. CODE ANN. § 15-6-3 (2021). The speedy trial statutes require a trial within two terms for a noncapital case, and three terms for a capital case after the written speedy trial demand is filed. GA. CODE ANN. § 17-7-170 to -171 (2011). The Kansas statute has timeframes of 150 days if the person is in custody for that case only and 180 days for all other cases. *See* KAN. STAT. ANN. § 22-3402 (2023). Ohio has multiple timeframes ranging from ten days for a person in custody accused of a minor misdemeanor to 270 days for a person out of custody accused of a felony. *See supra* note 148; OHIO REV. CODE ANN. § 2945.71 (LexisNexis 2022). The West Virginia statute timeframes range from four months to one year. *See supra* note 146. Montana has a timeframe of 6 months from the entry of a not guilty plea in misdemeanor cases, but no timeline for felony cases. *See supra* note 150.

159. The states with no timeframe included in their statute are Alabama, Indiana, Michigan, Missouri, New Hampshire, North Carolina, North Dakota, Rhode Island, Tennessee, Texas, Utah, and Wyoming. *See* sources cited *supra* note 134 and 145 and accompanying text. Additionally, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Pennsylvania, South Carolina, and Washington are included because those states do not have a state statute that addresses the speedy trial right. *See infra* Appendix A. Kentucky and Vermont were also included in this column because their statutes apply to a very small group of cases. *See id.*; *supra* note 146.

Additionally, some state statutes treat all cases the same, regardless of offense level.[160] Other state statutes treat cases differently depending on offense level.[161] Finally, some statutes only apply to certain offense levels[162] or types of cases.[163] In Virginia, the statute applies to all felony-level cases, but only to misdemeanor-level cases that have been appealed.[164] In Vermont, the statute only applies to defendants held in custody without bail for an offense punishable by less than death or life imprisonment.[165] New York's statute excludes cases involving a death.[166] Oklahoma's statute applies to all felony

160. *See* COLO. REV. STAT. § 18-1-405(1) (2021); CONN. GEN. STAT. § 54-82m (2007); IDAHO CODE § 19-3501 (2004); 725 ILL. COMP. STAT. 5/103-5(a)–(b) (2023); IND. CODE § 35-34-1-4(a) (1983); KAN. STAT. ANN. § 22-3402(a)–(b) (2023); MICH. COMP. LAWS § 768.1 (1948); MISS. CODE ANN. § 99-17-1 (1976); MO. REV. STAT. § 545.780(1) (1986); NEB. REV. STAT. § 29-1207(1) (2010); NEV. REV. STAT. § 178.556 (1991); N.J. STAT. ANN. § 2A:162-22(1)(a) (West 2017); N.D. CENT. CODE § 29-01-06(5) (2009); S.D. CODIFIED LAWS § 23A-44-5.1(1) (2021); TEX. CODE CRIM. PROC. ANN. art. 1.05 (West 1966); UTAH CODE ANN. § 77-1-6(1)(f) (West 1980); W. VA. CODE §§ 62-3-1, -21 (2005); WYO. STAT. ANN. § 7-11-203 (1987).

161. *See* CAL. PENAL CODE § 1382(a)(2)–(3) (West 2009); GA. CODE ANN. §§ 17-7-170 to -171 (2011) (Georgia allows for more time to try a capital speedy trial case); LA. CODE CRIM. PROC. ANN. art. 701(B)(1)(a) (2021); MONT. CODE ANN. § 46-13-401 (1989); N.Y. CRIM. PROC. LAW § 30.30(1) (McKinney 2020); OHIO REV. CODE ANN. § 2945.71 (LexisNexis 2022); OR. REV. STAT. § 135.746(1)(a)–(b) (2014); TENN. CODE ANN. § 40-18-103 (1981); WIS. STAT. § 971.10(1)–(2)(a) (1997). Tennessee's statute treats Class X felonies differently than all other cases, but as discussed previously, Class X felonies are no longer a classification. *See* TENN. CODE ANN. §§ 39-1-701 to -704, *repealed by* 1989 Tenn. Pub. Acts, ch. 591, § 1; *see also* TENN. CODE ANN. § 40-18-103 (1981).

162. *See* MD. CODE ANN., CRIM. PROC. § 6-103 (West 2023) (only applying to cases in circuit court, which are felony-level cases, while misdemeanors are handled in district court.); *see also* MD. JUDICIARY, MARYLAND'S JUDICIAL SYSTEM 1 (2023), http:// www.courts.state.md.us/sites/default/files/import/publications/pdfs/mdjudicialsystem.pdf; N.C. GEN. STAT. § 15-10 (1913) (only applying to felony-level and treason cases).

163. *See* ALA. CODE § 15-25-6 (2022) (only applies to cases with physical, sexual, or violent allegations "where the victim or a witness to the offense is a child or a protected person"); KY. REV. STAT. ANN. § 421.510(1) (West 2020) (only applies to cases where the victim is less than sixteen years old, and the crime is a sexual offense); KY. REV. STAT. ANN. § 500.110 (West 1978) (applying speeding trial right to imprisoned defendants); N.H. REV. STAT. ANN. § 632-A:9 (2003) (affording a speedy trial right to victims in sex cases where the victim is sixteen and under, or sixty-five and over); 11 R.I. GEN. LAWS § 1-37-11.2 (1988) (affording a speedy trial right to victims in sex cases where the victim is fourteen and under, or sixty-five and over).

164. *See* VA. CODE ANN. § 19.2-243 (2009).

165. *See* VT. STAT. ANN. tit. 13, § 7553b (1993).

166. *See* N.Y. CRIM. PROC. LAW § 30.30(3)(a) (McKinney 2020). Specifically, the New York statute excludes criminally negligent homicide (N.Y. PENAL LAW § 125.10 (McKinney 1965)), manslaughter in the second degree (N.Y. PENAL LAW § 125.15 (McKinney 2019)), manslaughter in the first degree (N.Y. PENAL LAW § 125.20 (McKinney 2019)), murder in the second degree (N.Y. PENAL LAW § 125.25 (McKinney 2019)), aggravated murder (N.Y. PENAL LAW § 125.26 (McKinney 2019)),

cases, but only non-felony cases if the person accused is held in custody solely for that case.[167] However, the vast majority of statutes that exist apply to all criminal cases.[168]

In some states, the speedy trial right only applies to people in custody.[169] However, the vast majority of statutes that exist apply to all persons accused regardless of their custody status.[170] But many statutes have different

and murder in the first degree (N.Y. PENAL LAW § 125.27 (McKinney 2019)). This means cases that include any of those charges do not have to be tried within the regular felony timeframes set by the statute (six months for defendants out of custody and ninety days for defendants in custody). *See* N.Y. CRIM. PROC. LAW § 30.30(1) (McKinney 2020).

167. *See* OKLA. STAT. tit. 22, § 812.1(A)–(B) (1999).

168. *See* CAL. PENAL CODE § 1382(a)(2)–(3) (West 2009); COLO. REV. STAT. § 18-1-405(1) (2021); CONN. GEN. STAT. § 54-82m (2007); GA. CODE ANN. §§ 17-7-170 to -171 (2011); IDAHO CODE § 19-3501 (2004); 725 ILL. COMP. STAT. 5/103-5(a)–(b) (2023); IND. CODE 35-34-1-4 (1983); KAN. STAT. ANN. § 22-3402(a)–(b) (2023); LA. CODE CRIM. PROC. ANN. art. 701(B) (2021); MICH. COMP. LAWS § 768.1 (1948); MISS. CODE ANN. § 99-17-1 (1976); MO. REV. STAT. § 545.780(1) (1986); MONT. CODE ANN. § 46-1-506 (2007), § 46-13-401 (1989); NEB. REV. STAT. § 29-1207(1) (2010); NEV. REV. STAT. § 178.556 (1991); N.J. STAT. ANN. § 2A:162-22 (West 2017) (but the remedy is only for people accused who are in custody); N.D. CENT. CODE § 29-01-06(5) (2009); OHIO REV. CODE ANN. §§ 2945.71 to .73 (LexisNexis 2022); OR. REV. STAT. § 135.746(a)–(b) (2014); S.D. CODIFIED LAWS § 23A-44-5.1(1) (2021); TENN. CODE ANN. § 40-18-103(a) (1981) (Class X felonies); TEX. CODE CRIM. PROC. ANN. arts. 1.05, 28.061 (West 1997); UTAH CODE ANN. § 77-1-6(1)(f) (West 1953); W. VA. CODE §§ 62-3-1, -21 (2005); WIS. STAT. § 971.10 (1997) (but the remedy is only for people accused who are in custody); WYO. STAT. ANN. § 7-11-203 (1987).

169. *See* N.J. STAT. ANN. § 2A:162-22(1)(a), (2)(a) (West 2017); N.C. GEN. STAT. § 15-10 (1913); VT. STAT. ANN. tit. 13, § 7553b(b) (1993) (only applies to people accused held in custody without bail for an offense punishable by less than death or life imprisonment); WIS. STAT. § 971.10(4) (1997). However, North Carolina also has a generic speedy trial statute with no timelines or remedies that allows for dismissal if "[t]he defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina." N.C. GEN. STAT. § 15A-954(a)(3) (1973).

170. *See* ALA. CODE § 15-25-6 (2022) (custody status does not matter but type of case does, as previously discussed); CAL. PENAL CODE § 1382(a)(2)–(3) (West 2009); COLO. REV. STAT. § 18-1-405(1) (2021); CONN. GEN. STAT. § 54-82m (2007); GA. CODE ANN. § 17-7-170 to -171 (2011); IDAHO CODE § 19-3501 (2004); 725 ILL. COMP. STAT. 5/103-5(d) (2023); IND. CODE § 35-34-1-4(a)(9) (1983); KAN. STAT. ANN. § 22-3402(a)–(b) (2023); KY. REV. STAT. ANN. § 421.510(2) (West 2020) (custody status does not matter, but type of case does, as previously discussed); LA. CODE CRIM. PROC. ANN. art. 701(B) (2021); MD. CODE ANN., CRIM. PROC. § 6-103 (West 2023); MICH. COMP. LAWS § 768.1 (1948); MISS. CODE ANN. § 99-17-1 (1976); MO. REV. STAT. § 545.780(2) (1986); MONT. CODE ANN. § 46-1-506 (2007), § 46-13-401 (1989); NEB. REV. STAT. § 29-1207(1) (2010); NEV. REV. STAT. § 178.556 (1991); N.H. REV. STAT. ANN. § 632-A:9 (2003) (custody status does not matter but type of case does, as previously discussed); N.Y. CRIM. PROC. LAW §§ 30.30, 170.30, 210.20 (McKinney 1999); N.D. CENT. CODE § 29-01-06(5) (2009); OHIO REV. CODE ANN. § 2945.71 to .73 (LexisNexis 2022); OKLA. STAT. tit. 22, § 812.1(A)–(B) (1999) (however in non-felony cases, the Oklahoma statute only applies to people in custody); OR. REV. STAT. § 135.746(a)–(b) (2014); 11 R.I. GEN. LAWS §

timeframes depending on whether the person accused is in custody, giving the government less time to try a case where the person accused is in pretrial custody.[171] Illinois has a shorter timeframe for the accused held in custody but, interestingly, Illinois is the only statute that defines custody time as "one continuous period of incarceration."[172] So if the person accused leaves custody and then goes back into custody during the case, "the term will begin again at day zero."[173] West Virginia has an earlier remedy of release from custody if not tried within the same four-month term that the case is indicted,[174]-but the same individuals who got released under that statute could get a dismissal with prejudice if not tried within one year.[175] Similarly, Michigan's statute has an earlier remedy of release from custody[176] and a separate remedy of dismissal with prejudice under its rule of criminal procedure.[177]

1-37-11.2 (1988) (custody status does not matter but type of case does, as previously discussed); S.D. CODIFIED LAWS § 23A-44-3 (1978); TENN. CODE ANN. § 40-18-103(a)–(c) (1981); TEX. CODE CRIM. PROC. ANN. art. 28.061 (West 1997); UTAH CODE ANN. § 77-1-6(1)(f) (West 1980); VA. CODE ANN. § 19.2-243 (2009) (custody status does not matter but type of case does, as previously discussed); W. VA. CODE § 62-3-1 (1981); WYO. STAT. ANN. § 7-11-203 (1987). Tennessee's statute does not technically apply to only those in custody, however the only remedy is that the trial court "may discharge the defendant from custody." TENN. CODE ANN. § 40-18-103(c) (1981). Additionally, failure to comply with the speedy trial statute in Tennessee "shall not act to require release of a defendant from custody or a dismissal or withdrawal of charges." *Id.* § 40-18-103(e).

171. *See* CAL. PENAL CODE § 1382(a)(3) (West 2009) (custody status only affects misdemeanor and infraction cases); CONN. GEN. STAT. § 54-82m (2007); 725 ILL. COMP. STAT. 5/103-5(a)–(b) (2023); KAN. STAT. ANN. § 22-3402(a)–(b) (2023) (providing 150-day timeframe for persons held in custody for that case only, and 180 days for all other cases); LA. CODE CRIM. PROC. ANN. art. 701(B)(1)(a)–(2)(a) (2021); N.Y. CRIM. PROC. LAW § 30.30(2) (McKinney 2023); OHIO REV. CODE ANN. § 2945.71 (LexisNexis 2022); OKLA. STAT. tit. 22, § 812.1(A)–(B) (2023); VA. CODE ANN. § 19.2-243 (2009). Ohio's speedy trial statute has an interesting structure where each day in custody counts as three days out of custody for purposes of the timeframes, except for the timeframes dealing with the timing of the preliminary hearing. OHIO REV. CODE ANN. § 2945.71(E) (LexisNexis 2022).

172. *See* 725 ILL. COMP. STAT. 5/103-5(a) (2023).

173. *See id.*

174. *See* W. VA. CODE § 62-3-1 (1981).

175. *See id.* § 62-3-21.

176. MICH. COMP. LAWS § 767.38 (1948) ("Every person held in prison upon an indictment shall, if he require it, be tried at the next term of court after the expiration of 6 months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court that the witnesses on behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident."). Additionally, Michigan's Rule of Criminal Procedure has provisions that deal with release from custody for people accused. MICH. CT. R. 6.004(C). Interestingly, the timeframe prescribed by the rule is shorter than the timeframe prescribed by the statute in some cases. *See supra* note 138.

177. MICH. CT. R. 6.004(A). However, the rule does not provide a timeframe associated with the remedy of dismissal with prejudice. *See id.*

Remedies vary considerably between the statutes.[178] Some statutes do not list a remedy.[179] In some statutes, the remedy is completely discretionary.[180]

178. *See infra* Table I.E.

179. *See* ALA. CODE § 15-25-6 (2022); KY. REV. STAT. ANN. § 421.510(2) (West 2020); MD. CODE ANN., CRIM. PROC. § 6-103 (West 2023); MICH. COMP. LAWS § 768.1 (1948) ("The people of this state and persons charged with crime are entitled to and shall have a speedy trial and determination of all prosecutions and it is hereby made the duty of all public officers having duties to perform in any criminal case, to bring such case to a final determination without delay except as may be necessary to secure to the accused a fair and impartial trial."); MISS. CODE ANN. § 99-17-1 (1976); N.H. REV. STAT. ANN. § 632-A:9 (2003); N.D. CENT. CODE § 29-01-06(5) (2009); 11 R.I. GEN. LAWS § 1-37-11.2 (1988). Michigan's main speedy trial statute does not have a remedy listed. *See* MICH. COMP. LAWS § 768.1 (1948). However, the Michigan Rule of Criminal Procedure does provide a remedy, as does a Michigan statute that applies to people accused held in custody. *See* MICH. CT. R. 6.004(A); MICH. COMP. LAWS § 767.38 (1948). That statute requires a remedy, but includes exceptions to when the court provides the remedy. *See id.* ("Every person held in prison upon an indictment shall, if he require it, be tried at the next term of court after the expiration of 6 months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court that the witnesses on behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident.").

180. *See* IND. CODE § 35-34-1-4(a) (1983) ("The court may, upon motion of the defendant, dismiss the indictment or information . . . ."); NEV. REV. STAT. § 178.556 (1991) ("[T]he district court may dismiss the indictment or information."); N.C. GEN. STAT. § 15-10 (1913) ("Provided, the judge presiding may, in his discretion, refuse to discharge such person if the time between the first and second terms of the court be less than four months."); WYO. STAT. ANN. § 7-11-203 (1987) ("If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint."). South Dakota has essentially two standards for speedy trial violations. *See* S.D. CODIFIED LAWS §§ 23A-44-3, -5.1 (2021). One covers situations where someone is arrested and there is a delay in charging. *Id.* § 23A-44-3. That standard is much weaker because it is discretionary for the court and the remedy is dismissal without prejudice. *See id.* ("a court may dismiss"); *id.* § 23A-44-5 (a dismissal under § 23A-44-3 "is not a bar to another prosecution for the same offense"). The other standard protects accused persons after they have been formally charged and there is a delay in the trial. *Id.* § 23A-44-5.1. That standard is stronger because it is less discretionary, and the remedy is dismissal with prejudice. *See id.*

Some statutes require a "good cause,"[181] "ends of justice served,"[182] or related finding[183] for violating speedy trial rights and not providing the remedy. In Missouri, dismissal is only permitted if "the court also finds that the defendant has been denied his constitutional right to a speedy trial."[184] Similarly, in Utah the remedy is only dismissal with prejudice in cases where an unconstitutional delay was found.[185] In Oklahoma, if the timeframes set by the statute pass then the court must set an immediate review.[186] In an immediate review evidentiary hearing, the court determines by a preponderance of the evidence if a violation of the accused person's speedy trial rights occured.[187] In Texas,

181. *See* CAL. PENAL CODE § 1382(a) (West 2009); COMM'N ON OFFICIAL LEGAL PUBL'NS, OFFICIAL 2024 CONNECTICUT PRACTICE BOOK 429 (2024) [hereinafter CONNECTICUT PRACTICE BOOK], https://www.jud.ct.gov/publications/PracticeBook/PB.pdf ("[A]bsent good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice . . . ."); IDAHO CODE § 19-3501 (2004); KAN. STAT. ANN. § 22-3402(e)(3) (2023) (requiring a good cause finding if the court grants more than one continuance for the state in situations where there is "material evidence that is unavailable, reasonable efforts have been made to procure such evidence and there are reasonable grounds to believe that such evidence can be obtained and trial commenced within the next succeeding 90 days"); MONT. CODE ANN. § 46-13-401 (1989); NEB. REV. STAT. § 29-1207(4)(f) (2010); TENN. CODE ANN. § 40-18-103(c) (1981) ("Upon good cause shown . . . the trial court may order the action to be continued from term to term and, in the meantime, may discharge the defendant from custody on the defendant's own undertaking, or on the undertaking of bail for appearance to answer the charge at the time to which the action is continued."); W. VA. CODE § 62-3-1 (1981).

182. *See* WIS. STAT. § 971.10(3)(a) (1997).

183. *See* LA. CODE CRIM. PROC. ANN. art. 701(D)(2) (2021) ("Failure to commence trial within the time periods provided above shall result in the release of the defendant without bail or in the discharge of the bail obligation, if after contradictory hearing with the district attorney, just cause for the delay is not shown."); N.J. STAT. ANN. § 2A:162-22(a)(2)(a) (West 2017) (after motion by the prosecution, "[i]f the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to commence trial in accordance with the time requirement . . . was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time in which the eligible defendant's trial shall commence."); OR. REV. STAT. § 135.752 (2014) ("[T]he court shall order the charging instrument to be dismissed without prejudice unless the court finds on the record substantial and compelling reasons to allow the proceeding to continue.").

184. MO. REV. STAT. § 545.780(2) (1986) ("Neither the failure to comply with this section nor the state's failure to prosecute shall be grounds for the dismissal of the indictment or information unless the court also finds that the defendant has been denied his constitutional right to a speedy trial.").

185. UTAH CODE ANN. § 77-1-7(2) (West 1990).

186. *See* OKLA. STAT. tit. 22, § 812.1(A)–(B) (1999).

187. *See id.* §§ 812.1–.2. The reasons that are permitted for a delay are incredibly easy to meet, including: "[T]he court has other cases pending for trial that are for persons incarcerated prior to the case in question, and the court does not have sufficient time to commence the trial of the case within

release is required if an accused person in custody is not tried within the timeframes listed,[188] but it does not provide direction on when the court should order the remedy of dismissal with prejudice.[189] Finally, other statutes require a remedy.[190]

Some statutes require the remedy of dismissal without prejudice,[191] which allows the prosecution to dismiss the case as it approaches the speedy trial time limit and consequently recharge it.[192] Dismissal without prejudice as a

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the time limitation fixed for trial;" "the court, state, accused, or the attorney for the accused is incapable of proceeding to trial due to illness or other reason and it is unreasonable to reassign the case;" and "due to other reasonable grounds the court does not have sufficient time to commence the trial of the case within the time limit fixed for trial." *Id.* § 812.2(A)(2)(g)–(i); *see also id.* § 812.2(A)(2)(a)–(f).

188. *See* TEX. CODE CRIM. PROC. ANN. art. 17.151 (West 2005).

189. *See id.* art. 28.061 ("If a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial is sustained, the court shall discharge the defendant.").

190. *See* COLO. REV. STAT. § 18-1-405(1) (2021); GA. CODE ANN. §§ 17-7-170 to -171 (2011); 725 ILL. COMP. STAT. 5/103-5(d) (2023) (mandating that the accused person "shall be discharged from custody or released from the obligations of his pretrial release or recognizance" but the court has some discretion in extending the timeframes); MICH. COMP. LAWS § 767.38 (1948) (requiring a remedy, but limited to people accused in custody and with some exceptions that the court can find to avoid granting the remedy); N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2020); OHIO REV. CODE ANN. § 2945.73 (LexisNexis 2022); S.D. CODIFIED LAWS § 23A-44-5.1(5) (2021) (requiring dismissal with prejudice unless the prosecution rebuts the presumption of prejudice); VT. STAT. ANN. tit. 13, § 7553b (1993) (requiring remedy, but only requires the court to set bail in situations where the person accused is being held without bail on an offense punishable by anything less than death or life imprisonment); VA. CODE ANN. §§ 19.2-242 to -243 (2018).

191. *See* IND. CODE § 35-34-1-4(f) (1983) ("An order of dismissal does not, of itself, constitute a bar to a subsequent prosecution of the same crime or crimes except as otherwise provided by law."); OKLA. STAT. tit. 22, § 812.2(C)–(D) (1999); OR. REV. STAT. § 135.752 (2014); WYO. STAT. ANN. § 7-11-203 (1987). The Wyoming statute does not clarify whether the dismissal is with or without prejudice. *See id.* However, Wyoming's Rule of Criminal Procedure makes it clear that the dismissal is without prejudice "unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay." WYO. R. PRAC. & P. 48(b)(7).

192. *See, e.g.*, Zedner v. United States, 547 U.S. 489, 499 (2006) ("When an indictment is dismissed without prejudice, the prosecutor may of course seek—and in the great majority of cases will be able to obtain—a new indictment."); United States v. Giambrone, 920 F.2d 176, 180 (2d Cir. 1990) ("[I]f the government suffers only dismissals without prejudice on motion of the defendant, it in effect gains successive 70–day periods in which to bring the defendant to trial."); *see also* 18 U.S.C. § 3288 (2018) ("Whenever an indictment or information charging a felony is dismissed for any reason after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information[.]").

192. Marc I. Steinberg, *Dismissal With or Without Prejudice Under the Speedy Trial Act: A Proposed Interpretation*, 68 J. CRIM. L. & CRIMINOLOGY 1, 2 (1977) (emphasizing that the Speedy Trial Act permits a dismissal without prejudice—meaning the prosecution can subject the defendant to future charges on the same grounds).

remedy creates no real relief for the accused if their speedy trial rights are violated, like Ms. Gideon in Part I.[193] Oregon's speedy trial statutes are egregious. Oregon's statues essentially create no speedy trial right for Oregonians because the timeframes set are so long,[194] there is a long list of time periods excluded from the timeframe calculation,[195] and the remedy is dismissal without prejudice.[196] Other states only provide the remedy of releasing the person from custody, however, have no remedy affecting the outcome of the case.[197] In Illinois, the only remedies are discharge from custody, and release from the obligations of pretrial release if the person accused is out of custody.[198]

193. *See supra* Part I; *see also* Steinberg, *supra* note 192, at 2 ("[D]ismissal without prejudice may inflict greater harm upon the accused than a trial delay, since reindictment could necessitate the hiring of new counsel and the duplication of legal and investigative procedures, all at severe monetary and psychological harm to the accused.").

194. *See* OR. REV. STAT. § 135.746(1)(a)–(b) (2014). Two years for misdemeanor level offenses and three years for felony level offenses. *Id.*

195. *See id.* § 135.748; *infra* Appedix C.

196. *See* OR. REV. STAT. § 135.752 (2014).

197. *See* LA CODE CRIM. PROC. ANN. art. 701(D)(2) (2021) ("Failure to commence trial within the time periods . . . shall result in the release of the defendant without bail or in the discharge of the bail obligation, if after contradictory hearing with the district attorney, just cause for the delay is not shown."); MICH. COMP. LAWS § 767.38 (1948) ("Every person held in prison upon an indictment shall, if he require it, be tried at the next term of court after the expiration of 6 months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court that the witnesses on behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident."); N.J. STAT. ANN. § 2A:162-22(a)(1)(a) (West 2017) ("The eligible defendant shall not remain detained in jail for more than 90 days, not counting excludable time for reasonable delays . . . prior to the return of an indictment. If the eligible defendant is not indicted within that period of time, the eligible defendant shall be released from jail[.]"); N.C. GEN. STAT. § 15-10 (1913) ("[I]f such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment . . . ."); TENN. CODE ANN. § 40-18-103(c) (1981) ("Upon good cause shown, either before or after the indictment on a charge other than a Class X felony, the trial court may order the action to be continued from term to term and, in the meantime, may discharge the defendant from custody on the defendant's own undertaking, or on the undertaking of bail for appearance to answer the charge at the time to which the action is continued."); WIS. STAT § 971.10(4) (1997) ("Every defendant not tried in accordance with [statutory speedy trial rights] shall be discharged from custody but the obligations of the bond or other conditions of release of a defendant shall continue until modified or until the bond is released or the conditions removed."). Although Michigan's statutes only provide a remedy of release for an accused person in custody when speedy trial is violated, Michigan also has a rule of criminal procedure that allows for dismissal with prejudice for all cases. *See* MICH. CT. R. 6.004(A). In Tennessee, the only remedy is that the trial court "may discharge the defendant from custody," but "failure to comply with [statutory speedy trial rights] shall not act to require release of a defendant from custody or a dismissal or withdrawl of charges." TENN. CODE ANN. § 40-18-103(c), (e) (1981).

198. 725 ILL. COMP. STAT. § 5/103-5(d) (2023).

Therefore, there is no remedy of dismissal—with or without prejudice—in Illinois.[199] Vermont's very limited statute does not even require release.[200] Instead, Vermont's statute only requires the court to set bail if a person, held without bail pretrial for an offense punishable by anything less than death or life imprisonment, is not tried within sixty days.[201]

Some states require dismissal with prejudice.[202] In Idaho and Montana, the remedy is dismissal with prejudice for misdemeanor level offenses, but

199. *See id.*

200. *See* VT. STAT. ANN. tit. 13, § 7553b (1993).

201. *See id.*

202. *See* CAL. PENAL CODE § 1387 (West 2023) (permitting the prosecuting agency to refile the case once and requiring dismissal with prejudice if there is another violation of the speed trial right after the case is refiled); COLO. REV. STAT. § 18-1-405(1) (2021); CONNECTICUT PRACTICE BOOK, *supra* note 181, at 429 ("[A]bsent good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice."); GA. CODE ANN. §§ 17-7-170(b), 17-7-171(b) (2011) ("[T]he defendant shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation."); KAN. STAT. ANN. § 22-3402(a)–(b) (2023) ("If any person charged with a crime and held in jail solely by reason thereof shall not be brought to trial within 150 days after such person's arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged . . . . If any person charged with a crime and held to answer on an appearance bond shall not be brought to trial within 180 days after arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged[.]"); NEB. REV. STAT. § 29-1208 (2010) ("If a defendant is not brought to trial [within six months], as extended by excluded periods, he or she shall be entitled to his or her absolute discharge from the offense charged and for any other offense required by law to be joined with that offense."); NEV. REV. STAT. § 178.562(1) (2011) (if the court orders a dismissal, than that dismissal "is a bar to another prosecution for the same offense."); N.Y. CRIM. PROC. LAW § 210.20(4) (McKinney 1999) ("In the absence of authorization to submit or resubmit, the order of dismissal constitutes a bar to any further prosecution of such charge or charges, by indictment or otherwise, in any criminal court within the county."); S.D. CODIFIED LAWS § 23A-44-5.1(5) (2021) (requires dismissal with prejudice unless the prosecution rebuts the presumption of prejudice); TEX. CODE CRIM. PROC. ANN. art. 28.061 (West 1997) ("If a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial is sustained, the court shall discharge the defendant. A discharge under this article is a bar to any further prosecution for the offense discharged and for any other offense arising out of the same transaction[.]"); W. VA. CODE § 62-3-21 (2022) ("Every person charged . . . with a felony or misdemeanor . . . shall be forever discharged from prosecution for the offense, if there be three regular terms of such court, after the presentment is made or the indictment is found against him without a trial[.]"). However, in California, there are some limited exceptions to the bar against future prosecution for the same offense, like if the original dismissal was a result of the failure to appear by the alleged domestic violence victim who was personally subpoenaed. *See* CAL. PENAL CODE § 1387(a)(3) (West 2023). As mentioned previously, West Virginia has two remedies for a speedy trial violation: release from custody if not tried within four months and dismissal with prejudice if not tried within one year. *See* W. VA. CODE §§ 62-3-1, -21 (2022).

dismissal without prejudice for felony level offenses.[203] In Ohio, the remedy is dismissal with prejudice except for situations where the court dismissed a felony case because the preliminary hearing was not held within the timeframes set by the statute.[204] In those situations, the case is dismissed without prejudice.[205] Similarly, in Virginia, the remedy is dismissal with prejudice except for situations where a case was dismissed because the accused was held in custody and no formal charges were brought within the timeframes authorized by the statute.[206] Finally, in Utah, the dismissal is without prejudice if the case was dismissed for unreasonable delay, but with prejudice if the case was dismissed for an unconstitutional delay.[207]

TABLE I.E STATE STATUTORY REMEDY[208]

Statutory Remedy of Dismissal With Prejudice[209]	**Other**[210]	**Statutory Remedy of Release from Custody**[211]	**Statutory Remedy of Dismissal Without Prejudice** [212]	**No Statutory Remedy**[213]
13 (26%)	5 (10%)	7 (14%)	4 (8%)	21 (42%)

203. *See* IDAHO CODE § 19-3506 (2019); MONT. CODE ANN. § 46-13-401 (1989).

204. *See* OHIO REV. CODE ANN. § 2945.73 (LexisNexis 2022).

205. *See id.* § 2945.73(A).

206. *See* VA. CODE ANN. §§ 19.2-242 to -243 (2018).

207. UTAH CODE ANN. § 77-1-7 (West 1990).

208. *See supra* notes 178–207 and accompanying text.

209. The states with a statutory remedy of dismissal with prejudice are California (after refiling), Colorado, Connecticut, Georgia, Kansas, Nebraska, Nevada, New York, Ohio, South Dakota, Texas, Virginia, and West Virginia. *See supra* notes 202, 204–206 and accompanying text.

210. The states included in this category are Idaho, Missouri, Montana, Utah, and Vermont. *See supra* notes 184, 200–201, 203, 207.

211. The states with a statutory remedy of release from custody are Illinois, Louisiana, Michigan, New Jersey, North Carolina, Tennessee, and Wisconsin. *See supra* notes 197–199 and accompanying text.

212. The states with a statutory remedy of dismissal without prejudice are Indiana, Oklahoma, Oregon, and Wyoming. *See supra* note 191 and accompanying text.

213. The states with no remedy included in their statute are Alabama, Kentucky, Maryland, Mississippi, New Hampshire, North Dakota, and Rhode Island. *See supra* note 179 and accompanying text. Additionally, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Pennsylvania, South Carolina, and Washington are included because those states do not have a state statute that addresses the speedy trial right. *See infra* Appendix A.

Something troubling is that some state statutes frame the right to a speedy trial as a state's[214] or victim's[215] right, as opposed to a right to protect the accused. Framing the speedy trial right as a state or victim's right is concerning because the right is rooted in the Sixth Amendment as a constitutional protection for the accused.[216] This value has been a fundamental right from the formation of our country.[217] For example, the Alabama statute only references a speedy trial in cases of a physical, sexual, or violent nature, where the alleged victims or witnesses are children[218] or protected people.[219] The Alabama statute does not include a definition of speedy trial, a specific timeframe, nor a remedy for violating the right.[220] The pertinent statute says: "[T]he court and

214. *See* NEV. REV. STAT. § 174.511 (1983) ("The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment."). However, Nevada has a lackluster additional statute that is written as a right of the accused. *Id.* § 178.556 ("If no indictment is found or information filed against a person within 15 days after the person has been held to answer for a public offense . . . the court may dismiss the complaint. If a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information.").

215. *See* ALA. CODE § 15-25-6 (2022); KY. REV. STAT. ANN. § 421.510 (West 2020); N.H. REV. STAT. ANN. § 632-A:9 (2003); 11 R.I. GEN. LAWS § 1-37-11.2 (1988).

216. *See* Zoglo, *supra* note 1, at 905; *see also* U.S. CONST. amend. VI ("In all criminal prosecutions, *the accused* shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . ." (emphasis added)).

217. *See* Hopwood, *supra* note 2, at 712–13; VIRGINIA DECLARATION OF RIGHTS § 8 (1776); Klopfer v. North Carolina, 386 U.S. 213, 223–25 (1967) ("We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215) . . . .").

218. ALA. CODE § 15-25-6 (2022). Children meaning people under the age of sixteen at the time of the trial. *Id.* § 15-25-1(c).

219. *Id.* § 15-25-1(d). A "protected person" means someone with developmental disabilities "that requires training or support similar to that required by a person with an intellectual disability . . . ." *Id.* Additionally, the disability must originate before the person is twenty-two, is expected to be indefinite, and constitutes a substantial handicap. *Id.* § 15-25-1(d)(1). If the disability is an intellectual disability, then the same requirements apply, but the age is eighteen, not twenty-two. *Id.* § 15-25-1(d)(2).

220. *See id.* § 15-25-6. For guidance on speedy trial in Alabama, practitioners could look to Rule 8 of the Alabama Rules of Criminal Procedure, which purports to cover "Speedy trial." ALA. R. CRIM. P. 8. However, Rule 8 only discuss: (1) prioritizing criminal trials over civil trials; (2) a prosecutor's duty to "inform the court of facts relevant to determining the order of cases on the docket;" and (3) that a "continuance may be granted by the court on its own motion or upon motion of a party stating with specificity the reasons justifying the continuance." ALA. R. CRIM. P. 8.1–8.3. Specifically, Rule 8.1 includes four factors the court shall consider when prioritizing cases for trial. ALA. R. CRIM. P. 8.1. The four factors are: "(1) The right of a defendant to a speedy trial under the constitutions of the

the prosecuting attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child or the protected person must endure the stress of involvement in the proceedings."[221] Although not explicitly naming the right as a victim's right, the Alabama statute is written only to ensure a speedy trial for children or protected alleged victims in cases of a physical, sexual, or violent nature.[222] Similarly, the New Hampshire[223] and Rhode Island[224] statutes do not include a definition of speedy trial, a specific timeframe, nor a remedy for violating the right. Unlike the Alabama statute, the New Hampshire[225] and Rhode Island[226] statutes make it clear that the statutes do establish a speedy trial right for the victim. The Kentucky statute only applies to cases where the crime is a sexual offense against a victim under the

United States and the State of Alabama; (2) Whether the defendant is in custody; (3) The relative gravity of the offense charged; and (4) The relative complexity of the case." *Id.*

221. ALA. CODE § 15-25-6 (2022). The statute goes on to say, "In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child or protected person." *Id.* Other states, including Idaho, Michigan, New Jersey, Utah, and Wisconsin, have a similar statute, but it is in addition to their general speedy trial statutes. *See* IDAHO CODE § 19-110 (1989); MICH. COMP. LAWS §§ 780.759, 780.786a (1994); N.J. STAT. ANN. § 2A:163-5 (West 1987); UTAH CODE ANN. § 77-38-7 (West 1995); WIS. STAT. § 971.105 (1995) ("In all criminal and delinquency cases . . . involving a child victim or witness, . . . the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness."). Additionally, Alaska and Arizona's rules of criminal procedure dealing with speedy trial have provisions related to the alleged victim. *See* ALASKA R. CRIM. P. 45(a), (h); ARIZ. R. CRIM. P. 8.5(v) ("In deciding a motion to continue a trial date, the court must also consider the victim's views and the right of the victim to a speedy disposition of the case."). The Alaska rule requires the court to "consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date." ALASKA R. CRIM. P. 45(a). The Alaska rule also requires the court, when ruling on a motion to continue, to "consider the victim's position, if known, on the motion to continue and the effect of a continuance on the victim." ALASKA R. CRIM. P. 45(h).

222. *See* ALA. CODE § 15-25-6 (2022) ("In all criminal cases and juvenile proceedings involving [a physical, sexual, or violent offense] where the victim or a witness to the offense is a child or a protected person, the court and the prosecuting attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child or the protected person must endure the stress of involvement in the proceedings.").

223. N.H. REV. STAT. ANN. § 632-A:9 (2003).

224. 11 R.I. GEN LAWS § 1-37-11.2 (1988).

225. N.H. REV. STAT. ANN. § 632-A:9 (2003) ("This provision establishes a right to a speedy trial for the victim and shall not be construed as creating any additional rights for the defendant.").

226. 11 R.I. GEN LAWS § 1-37-11.2 (1988) ("This provision establishes a right to a speedy trial to the victim and shall not be construed as creating any additional rights to the defendant.").

age of sixteen years old.[227] Unlike the Alabama, New Hampshire, and Rhode Island statutes, the Kentucky statute does include a timeframe of ninety days after a motion is brought by the prosecution and granted by the court.[228] However, just like the Alabama, New Hampshire, and Rhode Island statutes, the Kentucky statute does not include a definition of speedy trial or a remedy for violating the right.[229]

D. State Rules of Criminal Procedure

Clearly, states vary considerably with how they codify a speedy trial, if at all. Nineteen states have rules of criminal procedure to interpret the speedy trial right.[230] Rules of criminal procedure are typically laws created by the supreme court of the state, not the legislature—so in some states, it may be a quicker process to enact a rule of criminal procedure instead of a statute. Therefore, Part IV includes a proposed rule of criminal procedure that state supreme courts could use to ensure the speedy trial is truly a right that persons accused have moving forward. Alarmingly, Alaska's response to the COVID-19 pandemic was to toll the speedy trial period from March 16, 2020 to September 13, 2021.[231] That meant the 120-day time limit set by the Alaska Rule of Criminal Procedure was suspended for those 546 days (over eighteen months) in every criminal case.[232] Of the states with rules of criminal

227. *See* KY. REV. STAT. ANN. § 421.510(1) (West 2020) ("Where the victim is less than sixteen (16) years old and the crime is a sexual offense . . . a speedy trial may be scheduled[.]").

228. *See id.* § 421.510(2) ("The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.").

229. *See id.* § 421.510 (showing no defition of "speedy trial" or a remedy for violating the right of a speedy trial).

230. Those states are Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Dakota, Pennsylvania, Washington, and Wyoming. *See infra* Appendix A. Of those nineteen states, Alabama, Colorado, Indiana, Kentucky, Michigan, New Jersey, North Dakota, and Wyoming also have a speedy trial statute. *See infra* Appendix A.

231. *See* Order No. 1974 Resetting, Extending, and Tolling Criminal Rule 45 to Permit an Orderly Transition and Scheduling of Criminal Trials, Alaska Supreme Court 1 (2021), https://courts.alaska.gov/sco/docs/sco1974.pdf [hereinafter Alaska Supreme Court Order No. 1974] ("For all criminal cases, the time for trial will be tolled through September 12, 2021. As set forth below, the time for trial under Alaska Criminal Rule 45 shall be reset effective September 13, 2021 and all time prior to September 13, 2021 shall be excluded in Rule 45-time computations.").

232. *See id.*; ALASKA R. CRIM. P. 45(b). Additionally, the Order extended the 120-day timeframe

procedure that address speedy trials, the rules vary tremendously and are analyzed below. Like state statutes analyzed above in Section II.C, the rules of criminal procedure especially vary with respect to when the right applies,[233] the timeframe,[234] the discretion of the court, and the remedy.[235]

In some states, the right automatically triggers at arraignment,[236] at the time of arrest, or upon service of the summons, depending on how the case is brought before the court.[237] In Colorado the right automatically triggers by entry of a not guilty plea.[238] In some automatic right states, that right is triggered at different times depending on the offense level.[239] In New Mexico, the right is automatically triggered, but there are a number of different events that cause that trigger depending on the posture of the case.[240] Michigan's

200 days for felony cases filed as of September 13, 2021. Alaska Supreme Court Order No. 1974, *supra* note 231. For felony cases filed between September 13, 2021, and December 31, 2021, the Order extended the timeframe to 180 days. *See id.*

233. *See infra* Table I.F.

234. *See infra* Table I.G.

235. *See infra* Table I.H.

236. *See* ALASKA R. CRIM. P. 45(a); ARIZ. R. CRIM. P. 8.2(a); IOWA R. CRIM. P. 2.33(2)(c); N.J. R. CT. 3:25-4(c); WASH. ST. SUPER CT. R. 3.3(c); WYO. R. PRAC. & P. 48(b)(2). In Alaska, there is an exception to the automatic trigger for minor offenses. ALASKA R. CRIM. P. 45(c)(6). Minor offenses are violations that have no possibility of incarceration. ALASKA R. MINOR OFEENSES P. 2. That exception is that instead of an automatic right after arraignment, "the defendant must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first." ALASKA R. CRIM. P. 45(c)(6). In Arizona, the automatic trigger is arraignment for all cases except capital cases. ARIZ. R. CRIM. P. 8.2(a). In Arizona capital cases, the automatic trigger is "the date the State files a notice of intent to seek the death penalty[.]" ARIZ. R. CRIM. P. 8.2(a)(4).

237. *See* ARK. R. CRIM. P. 28.2(a); FLA. R. CRIM. P. 3.191(a); HAW. R. PEN. P. 48(b) (typically triggering "from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made;" however, the Rule explains the trigger in cases that are re-charged, resulted in a mistrial, or a new trial was ordered.); IND. R. CRIM. P. 4(A) ("If a defendant is detained in jail on a pending charge, a trial must be commenced no later than 180 days from the date the criminal charge against the defendant is filed, or from the date of arrest on such charge, whichever is later."); MASS. R. CRIM. P. 36(b)(1)(c) ("[A] defendant shall be tried within twelve months after the return day in the court in which the case is awaiting trial."); N.D. R. CRIM. P. 48(b); PA. R. CRIM. P. 600(A), (D)(1) (permitting automatic trigger for the timeframe, but to receive the remedy, the accused person is required to file a written motion).

238. COLO. R. CRIM. P. 48(b)(1).

239. *See* ARIZ. R. CRIM. P. 8.2(a) (clarifying that automatic trigger is arraignment for all cases except capital cases, where the automatic trigger is the date the government files the notice of intent to seek death).

240. N.M. R. CRIM. P. METRO. CT. 7-506(B) (triggering events include the arraignment, the date of an order finding the accused person competent to stand trial, the date of a mistrial order, the date of an arrest after a warrant for failing to appear).

Rule of Criminal Procedure is automatically triggered in cases where the person accused is in custody and the remedy is release.[241] Michigan does not provide a timeframe for the remedy of dismissal with prejudice, neither in the statutes dealing with speedy trial, nor in the rule of criminal procedure.[242] Many states with an automatic right include a separate provision for speedy trial rights after arrest and before formal charging.[243] Minnesota's Rule of Criminal Procedure requires an affirmative assertion of the right.[244] Florida[245] and Indiana[246] are unique in that the speedy trial right is automatically triggered, but the timeframe can be shortened if the accused person files a written speedy trial demand. Finally, some states are silent as to when the right applies.[247] The silent states are also the states where no time limit is set by the

241. *See* MICH. CT. R. 6.004(C).

242. *See* MICH. CT. R. 6.004; MICH. COMP. LAWS § 768.1 (1948).

243. *See* ARIZ. R. CRIM. P. 13.2 ("The State must file an information in superior court no later than 10 days after a magistrate finds probable cause or the defendant waives a preliminary hearing. If the State fails to file a timely information, a court must dismiss the information if the defendant files a motion seeking that relief . . . . A dismissal under this rule is without prejudice, but if the prosecution is refiled, the time limits under Rule 8.2 must be computed from the defendant's initial appearance on the original complaint."); COLO. R. CRIM. P. 48(b)(1) ("If, after the filing of a complaint, there is unnecessary delay in finding an indictment or filing an information against a defendant who has been held to answer in a district court, the court may dismiss the prosecution."); FLA. R. CRIM. P. 3.134(2) ("In no event shall any defendants remain in custody beyond 40 days unless they have been formally charged with a crime."); IOWA R. CRIM. P. 2.33(2)(a) ("When an adult is arrested for the commission of a public offense, . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution be dismissed unless good cause to the contrary is shown."); N.J. R. CT. 3:25-4 (explaining that people can be held in custody for ninety days before formal charging and can have this timeframe extended forty-five days after motion by the prosecutor); N.M. R. CRIM. P. METRO. CT. 7-506; *see also supra* note 128 (highlighting the New Jersey statute that contains the same timeline as the New Jersey Rule of Court and also noting the rule allows for the deadline to be "relaxed" if "good cause [is] shown"); N.D. R. CRIM. P. 48(b).

244. *See* MINN. R. CRIM. P. 6.06, 11.09(b). Minnesota requires a trial date to be set, and the case to be tried as soon as possible after the entry of a plea other than guilty. MINN. R. CRIM. P. 11.09(b). However, the remedy of release from custody is only applicable to those who enter a not guilty plea and make a speedy trial demand. *See id.*

245. *See* FLA. R. CRIM. P. 3.191(b). In Florida, the automatically triggered timeframes are ninety days for misdemeanors and 175 days for felonies, but the timeframe can be shortened to sixty days in any case if the accused person files a written speedy trial demand. FLA. R. CRIM. P. 3.191(a)–(b).

246. *See* IND. R. CRIM. P. 4. In Indiana, the automatically triggered timeframe for a person in custody is six months, and for everyone accused is one year, but the timeframe can be shorted to seventy days in any case if the accused person is in custody and files a written motion for early trial. IND. R. CRIM. P. 4(A)–(C).

247. *See* ALA. R. CRIM. P. 8.1–8.3; KY. R. CRIM. P. 9.02.

rule.[248]

TABLE I.F WHEN THE STATE RULE OF CRIMINAL PROCEDURE SPEEDY TRIAL RIGHT APPLIES[249]

Speedy Trial Right is Automatically Triggered[250]	**Speedy Trial Right Must be Asserted**[251]	**The Rule is Silent as to When the Right Applies**[252]
16 (32%)	1 (2%)	33 (66%)

Timeframes vary considerably between the rules. Some rules have no timeframes listed;[253] others have relatively short timeframes.[254] Finally, some rules have incredibly long timeframes.[255] Of rules that include timeframes,

248. *See* ALA. R. CRIM. P. 8.1–8.3 (2023); KY. R. CRIM. P. 9.02 (2023). Although Alabama and Kentucky have both a statute and rule of criminal procedure that cover speedy trial, neither define speedy trial or provide remedies. *See supra* notes 215, 218–222, 227–229 and accompanying text.

249. *See supra* notes 235–248 and accompanying text.

250. The states where the state rule of criminal procedure has the speedy trial right automatically triggered are Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Indiana, Iowa, Massachusetts, Michigan, New Mexico, New Jersey, North Dakota, Pennsylvania, Washington, and Wyoming. *See supra* notes 236–241 and accompanying text.

251. Minnesota is the only state rule of criminal procedure that requires the speedy trial right to be asserted. *See supra* note 244 and accompanying text.

252. The states where the state rule of criminal procedure is silent as to when the right applies are Alabama and Kentucky. *See supra* note 247 and accompanying text. Additionally, California, Connecticut, Delaware, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin are included because those states do not have a state rule of criminal procedure that addresses the speedy trial right. *See infra* Appendix A.

253. *See* ALA. R. CRIM. P. 8.1–8.3; KY. R. CRIM. P. 9.02; N.D. R. CRIM. P. 48(b).

254. *See* ALASKA R. CRIM. P. 45(b), (c)(1) ("A defendant charged with a felony, a misdemeanor, or a violation shall be tried within 120 days" after "the date the charging document is served upon the defendant"); FLA. R. CRIM. P. 3.191(a)–(b) (showing ninety days for a misdemeanor level offense, 175 days for a felony level offense, and sixty days in any case if the accused person files a written speedy trial demand); MINN. R. CRIM. P. 6.06, 11.09(b) (showing ten days after demand for an in custody misdemeanor, 120 days after demand for all other in custody cases, and presumably sixty days for all other cases although there is no remedy listed for cases where the accused is out of custody); WASH. SUPER. CT. R. 3.3(b) (showing sixty days after arraignment for someone accused in custody, ninety days for someone accused out of custody).

255. *See* ARK. R. CRIM. P. 28.1(a)–(c) (showing timeframes are nine months for someone in custody on the current offense, and twelve months for someone released from custody or in custody because

the range is from ten days for in custody misdemeanor level offenses in Minnesota[256] to twenty-four months for capital cases in Arizona.[257] Most of the rules with timeframes require a case to be brought to trial within 180 days (six months), at least for one category of cases.[258] The timeframe in New Mexico

of a conviction for another offense); IOWA R. CRIM. P. 2.33(2)(b) (showing the timeframe as twelve months for all criminal cases); MASS. R. CRIM. P. 36(b)(1)(C) (showing the timeframe as twelve months for all criminal cases filed after July 1, 1981); PA. R. CRIM. P. 600(A)(2)(a), (B) (showing the timeframe as 365 days for all criminal cases, but also allowing for release from custody after 120 or 180 days depending on the circumstances, except in cases where the accused person "is not entitled to release on bail as provided by law").

256. MINN. R. CRIM. P. 6.06.

257. ARIZ. R. CRIM. P. 8.2(a)(4).

258. ARIZ. R. CRIM. P. 8.2(a)(2) (180 days for person who is out of custody); COLO. R. CRIM. P. 48(b)(1) ("Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, the pending charges shall be dismissed, whether he is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode."); HAW. R. PEN. P. 48(b) ("Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months[.]"); IND. R. CRIM. P. 4(A) (180 days for person who is in custody); MICH. CT. R. 6.004(C) (180 days for felony cases where the person is in custody and 28 days for misdemeanor cases where the person accused is in custody); N.J. CT. R. 3:25-4(c)(1) (180 days for person who is in custody); WYO. R. PRAC. & P. 48(b)(2) ("A criminal charge shall be brought to trial within 180 days following arraignment unless continued as provided in this rule."). Arizona has a timeframe of 150 days if the accused person is in custody, 180 days if the accused person is out of custody, 270 days for complex cases, and 24 months for capital cases. ARIZ. R. CRIM. P. 8.2(a). "Complex Cases" are defined as first degree murder (not including capital cases); "offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic, or oral communication;" and any other case that the court finds complex based on factual findings. *Id.* at 8.2(a)(3). Indiana has a timeframe of six months if the accused person is in custody, one year for anyone accused (regardless of custody status), and the timeframe can be shortened to seventy days if the accused person is in custody and files a motion. IND. R. CRIM. P. 4(A)–(C). Similar to the New Jersey statute, the New Jersey Rule of Criminal Procedure has a 180-day timeframe after indictment, but in practice the timeframe would be much longer. *See* N.J. CT. R. 3:25-4(c)(1); *supra* note 150. The New Jersey rule, like the statute, has a long list of time periods that would be excluded from the timeframe calculation. *See* N.J. CT. R. 3:25-4(i); *supra* note 150. The rule similarly permits for the possible extension *before indictment*; but the rule also allows the deadline to be "relaxed" if "good cause shown," which is not included in the statute. *See* N.J. CT. R. 3:25-4(b)(2); N.J. STAT. ANN. § 2A:162-22 (West 2017); *supra* note 150. Finally, where the statute allows the court to "allocate an additional period of time in which the eligible defendant's trial shall commence" after the 180 days if the court makes certain findings, the rule is more specific. *See* N.J. STAT. ANN. § 2A:162-22(a)(2)(a) (West 2017). The rule states: "the court may allocate an additional period of time of no more than 60 days in which the defendant's trial shall commence." N.J. CT. R. 3:25-4(c)(4)(B). However, the rule

is 182 days.[259]

TABLE I.G STATE RULE OF CRIMINAL PROCEDURE TIMEFRAME[260]

Rule Timeframe < 180 Days (Six Months)[261]	**Rule Timeframe of 180 Days (Six Months)**[262]	**Rule Timeframe > 180 Days (Six Months)**[263]	**Other**[264]	**No Rule of Criminal Procedure Timeframe**[265]
4 (8%)	3 (6%)	6 (12%)	3 (6%)	34 (68%)

continues: "If exceptional circumstances are shown, the court may allocate an additional reasonable period of time to commence trial. If the court allocates any additional time, the court should specify its reasons for granting the extension and set forth a specific date for the trial." *Id.*

259. N. M. R. CRIM. P. METRO. CT. 7-506(B).

260. *See supra* notes 253–259 and accompanying text.

261. The states with a state rule of criminal procedure timeframe of less than 180 days (six months) are Alaska, Florida, Minnesota, and Washington. *See supra* note 254 and accompanying text.

262. The states with a state rule of criminal procedure timeframe of 180 days (six months) are Colorado, Hawaii, and Wyoming. *See supra* note 258 and accompanying text.

263. The states with a state rule of criminal procedure timeframe of more than 180 days (six months) are Arkansas, Iowa, Massachusetts, New Jersey, New Mexico, and Pennsylvania. *See supra* notes 255 and 258–259 and accompanying text. Although New Jersey's Rule of Criminal Procedure has a 180-day timeframe after indictment, in practice the timeframe is much longer. *See supra* note 258. Therefore, New Jersey is included in this column.

264. The states included in this other category are Arizona, Indiana, and Michigan because their timeframes have a large variation. *See supra* note 258.

265. The states with no timeframe included in their rule of criminal procedure are Alaska, Kentucky, and North Dakota. *See supra* note 253 and accompanying text. Additionally, California, Connecticut, Delaware, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin are included because those states do not have a state rule of criminal procedure that addresses the speedy trial right. *See infra* Appendix A.

Additionally, some rules treat all cases the same.[266] Other rules treat cases differently depending on the offense level.[267] Some states have the speedy trial right only apply to people in custody.[268] However, the vast majority of rules that exist apply to all persons accused, regardless of their custody status.[269] But many rules have different timeframes depending on if the person accused is in custody, giving the government less time to try a case where the person accused is in pretrial custody.[270] New Mexico has a shorter timeframe for individuals held in custody before charges are brought, but no distinction in the timeframe for people after formal charges are brought.[271] Colorado,[272] Michigan,[273] and Pennsylvania[274] have an additional remedy of release from custody, but that remedy does not affect the dismissal with prejudice

266. *See* ALA. R. CRIM. P. 8.1–8.3; ALASKA R. CRIM. P. 45(b); ARK. R. CRIM. P. 28.1, 30.1; COLO. R. CRIM. P. 48(b)(1); HAW. R. PEN. P. 48; IND. R. CRIM. P. 4(A)–(C); KY. R. CRIM. P. 9.02; MASS. R. CRIM. P. 36(b); N.J. CT. R. 3:25-4(C); N.M. R. CRIM. P. METRO. CT. 7-506; N.D. R. CRIM. P. 48; PA. R. CRIM. P. 600(A)(2)(a); WASH. CT. R. 3.3(b); WYO. R. PRAC. & P. 48(b)(2). Both the New Jersey and North Dakota rules and statutes treat all cases the same. *See* N.J. CT. R. 3:25-4(C); N.D. R. CRIM. P. 48; *supra* note 160 and accompanying text.

267. *See* ARIZ. R. CRIM. P. 8.2(a) (allowing more time for the prosecution of complex and capital cases); FLA. R. CRIM. P. 3.191(a); IOWA R. CRIM. P. 2.33(1); MICH. CT. R. 6.004(C) (listing a timeframe of twenty-eight days for a misdemeanor and 180 days for a felony, but applying only applies to people accused in custody. There is no timeframe in the Michigan Statute or Rule of Criminal Procedure for people accused who are out of custody.); MINN. R. CRIM. P. 6.06, 11.09(b). In Iowa, the remedy changes depending on the offense level. *See* IOWA R. CRIM. P. 2.33(1). If cases with simple or serious misdemeanors are dismissed due to a speedy trial violation, those cases are dismissed with prejudice. *See id.* However, if cases with aggravated misdemeanor or felonies are dismissed due to a speedy trial violation, those cases are dismissed without prejudice. *See id.*

268. *See* N.J. CT. R. 3:25-4(a). Both the New Jersey rule and applicable statuory provison only apply to those in custody. *See id.*; *supra* note 169.

269. *See* ALA. R. CRIM. P. 8.1–8.3; ALASKA R. CRIM. P. 45(b); ARIZ. R. CRIM. P. 8.2(a); ARK. R. CRIM. P. 28.1, 30.1; COLO. R. CRIM. P. 48(b)(1); FLA. R. CRIM. P. 3.191(a); HAW. R. PEN. P. 48; IND. R. CRIM. P. 4(A)–(C); IOWA R. CRIM. P. 2.33(2); KY. R. CRIM. P. 9.02; MASS. R. CRIM. P. 36(b); MICH. CT. R. 6.004(A); MINN. R. CRIM. P. 6.06, 11.09; N.M. R. CRIM. P. METRO. CT. 7-506; N.D. R. CRIM. P. 48; PA. R. CRIM. P. 600(A)(2)(a); WASH. CT. R. 3.3(b); WYO. R. PRAC. & P. 48(b).

270. *See* ARIZ. R. CRIM. P. 8.2(a) (giving 150 days if the accused person is in custody and 180 days if the accused person is out of custody, excluding complex and capital cases that have different timeframes as discussed in note 265); ARK. R. CRIM. P. 28.1(a)–(c); IND. R. CRIM. P. 4(A)–(C) (showing the timeframe is one year for everyone accused of a crime, but if the person is in custody then they can get released if not tried within six months and can file a motion for an early trial within seventy days); MINN. R. CRIM. P. 6.06, 11.09(b); WASH. CT. R. 3.3(b).

271. N. M. R. CRIM. P. METRO. CT. 7-506.

272. COLO. R. CRIM. P. 48(b)(1).

273. *See supra* notes 176–177 and accompanying text.

274. PA. R. CRIM. P. 600(B).

remedy.[275]

Remedies vary considerably between the rules.[276] Some rules have no remedy listed,[277] others the remedy is completely discretionary.[278] Some rules require a "good cause"[279] finding to deny the application of a remedy for a speedy trial rights violation. Finally, other rules have a required remedy.[280]

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275. *See* COLO. R. CRIM. P. 48(b)(1) ("Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, the pending charges shall be dismissed, whether he is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode."); MICH. CT. R. 6.004(A), (C) (establishing that a defendant incarcerated past a specific period pursuant to the offense level must be released and that any violation of the "defendant's constitutional right to a speedy trial . . . is entitled to dismissal of the charge with prejudice"); PA. R. CRIM. P. 600(D) (noting that "when a defendant is held in pretrial incarceration beyond the time set forth [in the statutory requirements] . . . the defendant . . . may file a written motion requesting that the defendant be released immediately on nominal bail" and that when a defendant is not tried within the statutory requirements, the defendant can move for dismissal with prejudice).

276. *See infra* note 301 (Table I.H).

277. *See* ALA. R. CRIM. P. 8.1–8.3; KY. R. CRIM. P. 9.02.

278. *See* HAW. R. PEN. P. 48(b) ("Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months[.]"); MICH. CT. R. 6.004(A) ("Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is *entitled* to dismissal of the charge with prejudice."); N.D. R. CRIM. P. 48; PA. R. CRIM. P. 600(D) (showing the rule requiring the court to hold a hearing on the motion to dismiss or motion for release from custody, but the rule does not require the court to grant the remedy). The North Dakota statute does not have a listed remedy, compared to the North Dakota Rule of Criminal Procedure which includes discretionary remedies of dismissal or release. *See supra* note 179; N.D. R. CRIM. P. 48.

279. *See* IOWA R. CRIM. P. 2.33(2)(c) ("All criminal cases must be brought to trial within one year after the defendant's initial arraignment . . . unless an extension is granted by the court, upon a showing of good cause."); MINN. R. CRIM. P. 6.06, 11.09(b); N.J. CT. R. 3:25-4(c)(2).

280. *See* ALASKA R. CRIM. P. 45(e), (g)–(h) (requiring a remedy that "the court upon motion of the defendant shall dismiss the charge with prejudice" but the court has some discretion in extending the timeframes); ARIZ. R. CRIM. P. 8.6 (requiring the court to "dismiss the prosecution with or without prejudice," but the court has some discretion in extending the timeframes); COLO. R. CRIM. P. 48(b)(1); FLA. R. CRIM. P. 3.1911(p) (requiring a remedy, but the court has some discretion in extending the timeframes); IND. R. CRIM. P. 4(A), (D) (requiring a remedy, but the court has discretion in determining what periods of time are excluded from the calculation, including allowing delay for "congestion of the court calendar"); MASS. R. CRIM. P. 36(b)(1)(D) (requiring a remedy that an accused person "shall be entitled upon motion to a dismissal of the charges," but the court has discretion in determining what periods of time are excluded from the calculation); N.M. R. CRIM. P. METRO. CT. 7-506(E)(2) ("In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice."); WASH. SUPER. CT. R. 3.3(e)(8), (h) (requiring a remedy of dismissal with prejudice, but the court has discretion in

Wyoming's Rule of Criminal Procedure is the only state rule of criminal procedure where the typical remedy is dismissal without prejudice.[281] However, Wyoming does allow for dismissal with prejudice in some circumstances.[282] Minnesota and New Jersey's rules of criminal procedure only provide a remedy of releasing the person from custody, but have no remedy that affects the outcome of the case.[283] Some states require dismissal with prejudice.[284] Iowa's remedy is dismissal with prejudice for cases with simple or serious misdemeanors, but without prejudice for cases with aggravated misdemeanors or felonies.[285]

Florida's remedy is ultimately dismissal with prejudice,[286] but Florida does require the accused person to file a "Notice of Expiration of Speedy Trial Time."[287] After filing the notice, the court has a hearing where it orders the trial to commence within ten days of the hearing unless the court finds a

determining what periods of time are excluded from the calculation, including "[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties"); WYO. R. PRAC. & P. 48(b)(4), (b)(7) (requiring a remedy of dismissal, but the court has discretion in extending the timeframes).

281. *See* WYO. R. PRAC. & P. 48(b)(7). The Wyoming Rule of Criminal Procedure does allow dismissal with prejudice, but only in circumstances where "the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay." *Id.* Otherwise the dismissal is without prejudice. *Id.*

282. *See id.*

283. *See* MINN. R. CRIM. P. 6.06, 11.09(b); N.J. CT. R. 3:25-4(c)(2)–(4).

284. *See* ALASKA R. CRIM. P. 45(g); COLO. R. CRIM. P. 48(b)(1); MASS R. CRIM. P. 36(b)(1)(D); MICH. CT. R. 6.004(A) ("Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice."); N.M. R. CRIM. P. METRO. CT. 7-506(E)(2) ("In the event the trial of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice."); WASH. SUPER. CT. R. 3.3(h) ("A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice."). The text of Massachusetts's Rule of Criminal Procedure is not clear on whether the dismissal is with or without prejudice. *See* MASS. R. CRIM. P. 36(b)(1)(D) ("If a defendant is not brought to trial within the time limits of this subdivision, as extended by subdivision (b)(2), he shall be entitled upon motion to a dismissal of the charges."). However, caselaw makes it clear that the dismissal is with prejudice. Commonwealth v. Graham, 106 N.E.3d 581, 591 (Mass. 2018) ("Dismissal under rule 36 is with prejudice." (citing Commonwealth v. Lauria, 576 N.E.2d 1368, 1373 (Mass. 1991))).

285. *See* IOWA R. CRIM. P. 2.33(1).

286. FLA. R. CRIM. P. 3.191(n) ("Discharge from a crime under [the speedy trial 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.").

287. *See* FLA. R. CRIM. P. 3.191(p).

permissible exception.[288] Only after that ten-day period, if the accused still has not been tried, would the case be dismissed with prejudice.[289] Arkansas,[290] Colorado,[291] Indiana,[292] Michigan,[293] North Dakota,[294] and Pennsylvania[295] have a somewhat hybrid approach. In Arkansas, the initial remedy for an accused in custody is release from custody after nine months; if twelve months pass after the person is released, and the person still is not tried, then the remedy is dismissal with prejudice.[296] For individuals released from custody on the case or in custody because of a conviction in another case, then the timeline is twelve months and the remedy is dismissal with prejudice.[297] In Indiana, the initial remedy for a defendant in custody is release from custody after six months, but for all cases, the remedy is dismissal without prejudice if the case has been pending for more than one year.[298] Additionally, if an accused person in custody brings a written motion for early trial, then they are required to have the trial within seventy days of the motion or the case is dismissed without prejudice.[299] Colorado,[300] Michigan,[301] North Dakota,[302] and

288. *See id.*
289. *See id.*
290. ARK. R. CRIM. P. 28.1(a)–(c), (f).
291. COLO. R. CRIM. P. 48(b)(1).
292. IND. R. CRIM. P. 4(A), (C).
293. MICH. CT. R. 6.004(A), (C).
294. N.D. R. CRIM. P. 48.
295. PA. R. CRIM. P. 600.
296. *See* ARK. R. CRIM. P. 28.1(a)–(c), (f).
297. *See id.*
298. *See* IND. R. CRIM. P. 4(A), (B). The rule of criminal procedure is not explicit on whether the dismissal is with or without prejudice, however caselaw makes it clear that the dismissal is without prejudice. *See* Hornaday v. State, 639 N.E.2d 303, 308 (Ind. Ct. App. 1994) (citations omitted) ("Under Crim.R. 4(C), the speedy-trial clock is stopped during the period between dismissal and refiling . . . . Accordingly, the clock begins running where it left off when new charges are filed."); Goudy v. State, 689 N.E.2d 686, 691 (Ind. 1997) (citation omitted) ("The seventy-day speedy trial clock is stopped if charges against a defendant are dismissed, but will begin running again where it left off if the State refiles the charges."). Additionally, the Indiana statute is clear that it is dismissal without prejudice. *See supra* note 191.
299. *See* IND. R. CRIM. P. 4(B).
300. COLO. R. CRIM. P. 48(b)(1).
301. *See* MICH. CT. R. 6.004(A), (C) (the dismissal remedy is with prejudice).
302. N.D. R. CRIM. P. 48(b). Compared to the North Dakota statute which has no remedy listed, the North Dakota Rule of Criminal Procedure includes the discretionary remedies of dismissal or release. *See id.* ("The court may dismiss an indictment, information or complaint, or order the release of any arrested person if unnecessary delay occurs[.]"); *supra* note 179.

Pennsylvania[303] allow both remedies of release from custody and dismissal if the accused person's constitutional right to a speedy trial is violated. However, neither Michigan nor North Dakota's rules of criminal procedure nor their statutes dealing with speedy trial, give any timeframe on when dismissal would be appropriate.[304] Similar to the federal statute, Hawaii and Arizona give the discretion to the court to determine if the dismissal is with or without prejudice.[305]

303. PA. R. CRIM. P. 600(D) (showing the remedy for not bringing a person to trial within the statutory timeframes is dismissal with prejudice and the remedy for keeping a person in pre-trail custody longer than the statute allows for permits the person to request nominal bail).

304. *See* MICH. CT. R. 6.004; N.D. R. CRIM. P. 48(b); *supra* notes 134–138 and accompanying text.

305. *See* ARIZ. R. CRIM. P. 8.6; HAW. R. PEN. P. 48(b); 18 U.S.C. § 3162(a)(2) (2018).

TABLE I.H STATE RULE OF CRIMINAL PROCEDURE REMEDY[306]

Rule Remedy of Dismissal With Prejudice[307]	**Other**[308]	**Rule Remedy of Release From Custody**[309]	**Rule Remedy of Dismissal Without Prejudice** [310]	**No Rule of Criminal Procedure Remedy**[311]
6 (12%)	8 (16%)	2 (4%)	1 (2%)	33 (66%)

Something troubling is that some state rules frame the right to a speedy trial as a state's or victim's right as opposed to a right to protect the person accused. Michigan's Rule of Criminal Procedure makes it clear that the right to a speedy trial is both a right for the person accused and the prosecution.[312] Iowa's Rule of Criminal Procedure includes a public policy provision that "criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties."[313]

306. *See supra* notes 276–305 and accompanying text.

307. The states with a state rule of criminal procedure remedy of dismissal with prejudice are Alaska, Colorado, Florida, Massachusetts, New Mexico, and Washington. *See supra* notes 284, 286–289 and accompanying text.

308. The states included in this other category are Arizona, Arkansas, Hawaii, Indiana, Iowa, Michigan, North Dakota, and Pennsylvania. *See supra* notes 285, 290, 292–299, 301–305. Arizona and Hawaii are included in the other category because whether the dismissal is with or without prejudice is up to the discretion of the court. *See supra* note 305 and accompanying text. Arkansas, Indiana, Michigan, North Dakota, and Pennsylvania are in the other category because these states utilize a hybrid approach involving release and dismissal. *See supra* notes 290, 292–299, 301–305. Iowa is included in the other category because whether the remedy of dismissal is with or without prejudice depends on the level of offense. *See supra* note 285 and accompanying text.

309. The states with a state rule of criminal procedure remedy of release from custody are Minnesota and New Jersey. *See supra* note 283 and accompanying text.

310. Wyoming is the only state rule of criminal procedure with a remedy of dismissal without prejudice. *See supra* note 281 and accompanying text.

311. The states with no remedy included in their rule of criminal procedure are Alabama and Kentucky. *See supra* note 277 and accompanying text. Additionally, California, Connecticut, Delaware, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin are included because these states do not have a state rule of criminal procedure that addresses the speedy trial right. *See infra* Appendix A.

312. MICH. CT. R. 6.004(A) ("The defendant and the people are entitled to a speedy trial and to a speedy resolution of all matters before the court.").

313. IOWA R. CRIM. P. 2.33(2).

III. VIOLATIONS OF THE SPEEDY TRIAL RIGHT

The American Bar Association's (ABA) Standards for Criminal Justice include provisions on speedy trial in 12-1.1 through 12-4.5.[314] The ABA first created and implemented its criminal justice standards in 1964, which still remain "the preeminent national body in the field."[315] The ABA Standards are used by the United States Supreme Court "as primary and secondary authority in majority, concurring, and dissenting opinions."[316] In *United States v. Marion*, the Court specifically used the ABA Standards in its discussion on how to determine the start of the time period for the speedy trial right.[317] Standard 12-1.2 covers the importance of having a statute or rule of criminal procedure dealing with speedy trial that:

> (i) sets specific limits on the time within which either the defendant must be brought to trial or the case must be resolved . . .; (ii) provides guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and (iii) establishes appropriate consequences in the event that the accused's right to a speedy trial is denied.[318]

Clearly, the ABA believes that establishing specific timeframes is important.

In Standard 12-2.1, the ABA proposed a ninety-day presumptive speedy trial time limit for people accused in custody, and a 180-day presumptive limit for people accused out on bail.[319] The National Center for State Courts (NCSC) agrees with the ABA on establishing timelines, creating the *Model Time Standards for State Trial Courts* with the goal of unifying the national

314. *See* AM. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: SPEEDY TRIAL AND TIMELY RESOLUTION OF CRIMINAL CASES 1–17 (3d ed. 2006), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/speedy_trial.authcheckdam.pdf [hereinafter ABA SPEEDY TRIAL AND TIMELY RESOLUTION].

315. B.J. George, Jr., *The American Bar Association's Mental Health Standards: An Overview*, 53 GEO. WASH. L. REV. 338, 339 (1985); *see also* Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10, 10 (2009).

316. Robert R. Rigg, *The T-Rex Without Teeth: Evolving* Strickland v. Washington *and the Test for Ineffective Assistance of Counsel*, 35 PEPP. L. REV. 77, 78 (2007) (footnotes omitted).

317. 404 U.S. 307, 321 n.12 (1971); *see also* Rigg, *supra* note 316, at 78–79.

318. ABA SPEEDY TRIAL AND TIMELY RESOLUTION, *supra* note 314, at 1–2 (Standard 12-1.2(a)(i)–(iii)).

319. *Id.* at 3–4 (Standard 12-2.1(b)).

disparity that exists.[320] Specifically, the NCSC proposed 75% of all felonies should be resolved in ninety days, and 90% of all felonies should be resolved in 180 days.[321] Additionally, the NCSC proposed 75% of all misdemeanors should be resolved in sixty days, and 90% of all misdemeanors should be resolved in ninety days.[322] Yet based on my analysis, fourteen states have no such timeframes[323] and eleven states have timeframes that exceed the 180-day timeframe[324] endorsed by both the ABA and NCSC.[325] Therefore, half of the states already fall short of providing a speedy trial right.

320. RICHARD VAN DUIZEND ET AL., MODEL TIME STANDARDS FOR STATE TRIAL COURTS 1–2 (2011), www.ncsc.org/__data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf/.

321. *Id.* at 4.

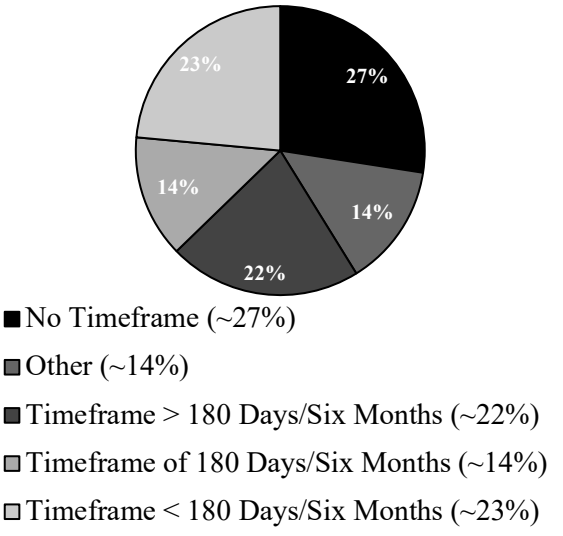
322. *Id.* at 8.

323. *See infra* Figure II.A (includes the timeframe for all fifty states and the federal statute); *see infra* Appendix D.

324. *See infra* Figure II.A (includes the timeframe for all fifty states and the federal statute); *see infra* Appendix D.

325. *See* ABA SPEEDY TRIAL AND TIMELY RESOLUTION, *supra* note 314, at 3–4 (Standard 12-2.1(b)); VAN DUIZEND ET AL., *supra* note 320, at 4, 8.

FIGURE II.A TIMEFRAME FOR SPEEDY TRIAL VIOLATION



When analyzing the timeframes, it is important to consider the categories of excludable time periods, both the number of categories and the breadth of those categories.[326] For example, the federal statute is included in Figure II.A and Appendix D as a jurisdiction with a timeframe of less than 180 days, yet the federal statute has more excludable time periods than any of the state statutes or rules of criminal procedure that give any direction on the timeframe for a speedy trial.[327] Similarly, New York is included in Figure II.A and Appendix D as a jurisdiction with a timeframe of less than 180 days, but New York has eleven categories of excludable time, including a very concerning category of "the period during which the defendant is without counsel through

326. *See infra* Appendices B, C.
327. *See infra* Appendices B–D; 18 U.S.C. § 3161(h) (2018).

no fault of the court."[328] As an example of the breadth of the categories that some states include, Oklahoma's statute permits excluding any time where the delay is attributable to the accused person or their attorney;[329] any party, including the state or the court, is unavailable for trial because of illness or some other reason;[330] and there are "other reasonable grounds" that the court does not have time to start the trial within the statutory period.[331] Additionally, Pennsylvania's Rule of Criminal Procedure only includes one category of excludable time, but that category covers all the time the case is pending, except instances where both the delay is caused by the state and the delay was due to the state not exercising due diligence.[332]

The default remedy under the ABA's Criminal Justice Standards is dismissal with prejudice.[333] Yet based on my analysis, twenty-nine states and the federal government allow for remedies short of dismissal with prejudice.[334] Therefore, 58% of the states and the federal government already fall short of providing a speedy trial right.

328. N.Y. CRIM. PROC. LAW § 30.30(4) (McKinney 2020). Ohio has a similar category. *See* OHIO REV. CODE ANN. § 2945.72(C) (LexisNexis 2022) ("Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon the accused's request as required by law[.]"). With so many public defense offices having a crisis of appointment, this category is a convenient way to deprive the accused of their speedy trial rights while blaming the public defenders' offices. *See* Bruce Vielmetti, *Wisconsin Is Sued over Delayed Lawyer Appointments in Criminal Cases*, MILWAUKEE J. SENTINEL (Aug. 24, 2022, 9:37 AM), www.jsonline.com/story/news/2022/08/24/wisconsin-sued-over-lackdefenselawyers/7874165001/; Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases: Still a National Crisis?*, 86 GEO. WASH. L. REV. 1564, 1578–80 (2018); Talk of the Nation, *After 50 Years, A State Of Crisis for the Right to Counsel*, NPR (Mar. 19, 2013, 1:00 PM), www.npr.org/2013/03/19/174753333/after-50-years-a-state-of-crisis-for-the-right-to-counsel (discussing that prosecution offices across the country are grossly overcharging while public defense offices are underfunded); Colleen Cullen, *Mo' Money, Fewer Problems: Examining the Effects of Inadequate Funding on Client Outcomes*, 30 GEO. J. LEGAL ETHICS 675, 677 (2017) ("The severe underfunding of public defense offices has caused public defenders to have unmanageable caseloads, which negatively impacts their clients.").

329. OKLA. STAT. tit. 22, § 812.2(A)(2)(a)–(b) (1999).

330. *Id.* § 812.2(A)(2)(h).

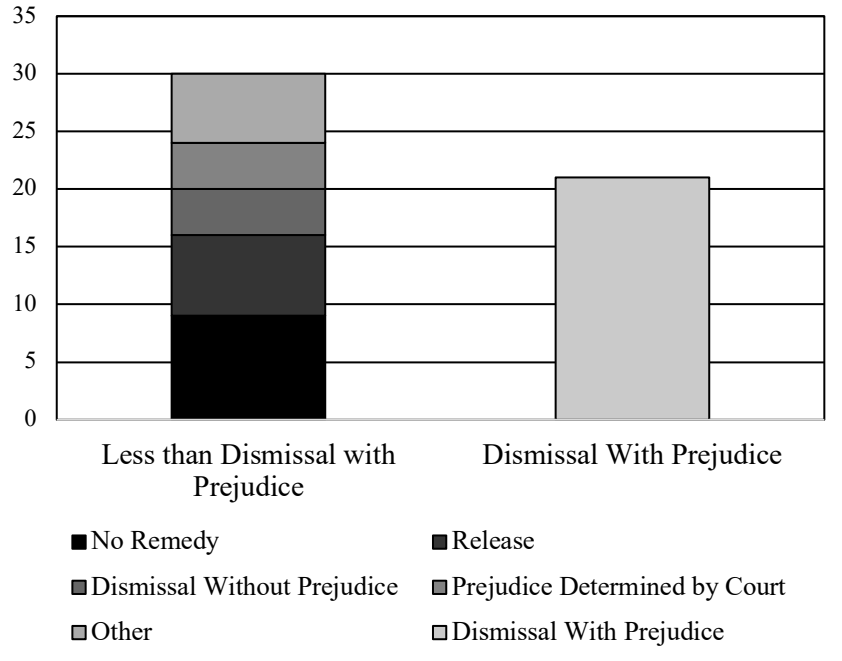
331. *Id.* § 812.2(A)(2)(i).

332. PA. R. CRIM. P. 600(C)(1).

333. *See* ABA SPEEDY TRIAL AND TIMELY RESOLUTION, *supra* note 314, at 9–10 (Standard 12-2.7(b)).

334. *See supra* Figure II.B (includes the remedy for all fifty states and the federal statute); *infra* Appendix E.

FIGURE II.B REMEDY FOR SPEEDY TRIAL VIOLATION



Everyone should care about the nonexistent speedy trial right. All system actors should realize the importance of a constitutional right for the accused. The ABA has standards on the role of the prosecutor[335] and defense counsel.[336] Standard 3-1.9(a) explains the prosecution "should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses."[337] Similarly, "[d]efense

335. *See* AM. BAR ASS'N, CRIMINAL JUSTICE STANDARDS FOR THE PROSEUCTION FUNCTION (4th ed. 2017) [hereinafter PROSEUCTION FUNCTION].

336. *See* AM. BAR ASS'N, CRIMINAL JUSTICE STANDARDS FOR THE DEENSE FUNCTION (4th ed. 2017) [hereinafter DEFENSE FUNCTION].

337. *See* PROSEUCTION FUNCTION, *supra* note 335 (Standard 3-1.9(a)).

counsel should act with diligence and promptness in representing a client, and should avoid unnecessary delay in the disposition of cases."[338] Additionally, the ABA explains prosecution offices "should be organized and supported with adequate staff and facilities to enable it to process and resolve criminal charges with fairness and efficiency."[339] Excessive delays not only hurt the accused, but also the victims.[340] In a study of 406 women identified as victims of domestic violence, the vast majority experienced many perceived unnecessary delays.[341] The multiple postponements ultimately "had a negative impact on participants' faith in the system."[342]

It is imperative for there to exist uniform legislation or rules of criminal procedure addressing speedy trials because if the issue is left up to the courts, courts are reluctant to overturn convictions.[343] Maine is a perfect example of this problem. In Maine, the right to a speedy trial is in the constitution,[344] but the state does not have a statute or rule of criminal procedure with the specific requirements of that right.[345] Prior to one case in March of 2023,[346] the Maine Supreme Judicial Court had not found in favor of the accused on a speedy trial violation claim since 1960.[347] In the case in March of 2023, the Maine Supreme Judicial Court finally found that there was a potential speedy trial violation, but remanded the case to the post-conviction review court to do the proper factual inquiry.[348] The post-conviction review court has not issued a decision yet, so there is still a possibility that the accused fails on his speedy

338. *See* DEFENSE FUNCTION, *supra* note 336 (Standard 4-1.9(a)).

339. *See* PROSEUCTION FUNCTION, *supra* note 335 (Standard 3-1.9(a)). *See generally* Adam M. Gershowitz & Laura R. Killinger, Essay, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 NW. U. L. REV. 261 (2011) (discussing the harm to criminal defendants caused by prosecutorial caseloads and providing solutions to the problem).

340. *See* Margret E. Bell et al., *Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcome and Process*, 17 VIOLENCE AGAINST WOMEN 71, 79 (2011); Albrecht et al., *supra* note 3, at 753 ("The result, historically, . . . is a system that victimizes all participants.").

341. *See* Bell et al., *supra* note 340, at 74, 79.

342. *Id.* at 79.

343. *See* Hopwood, *supra* note 2, at 709 ("Appellate courts . . . prefer to thwart the [Speedy Trial Act's] requirements rather than reverse a conviction obtained by otherwise constitutional means.").

344. ME. CONST. art. I, § 6.

345. *See infra* Appendix A (noting Maine's only speedy trial guarantee comes from its constitutional provision).

346. *See* Winchester v. State, 291 A.3d 707, 726–27 (Me. 2023).

347. *See* Hogan, *supra* note 18 (according to the ACLU of Maine "no defendant has won a speedy trial claim in the Maine Law Court since 1960.").

348. *Winchester*, 291 A.3d at 727.

trial claim, continuing Maine's trend for the last sixty years.

IV. PROPOSED SOLUTIONS

This Part proceeds in two sections. Section IV.A discusses key elements that should exist in all speedy trial statutes or rules of criminal procedure. Additionally, it ends with a proposed law that legislators should use to draft a statute. This law could also assist state supreme courts in drafting a rule of criminal procedure to ensure their state is affording the constitutional right to a speedy trial guaranteed by the Sixth Amendment. Section IV.B addresses potential criticisms of this proposed law.

A. Speedy Trial Statute or Rule of Criminal Procedure

Speedy trial statutes or rules of criminal procedure should include both time limits and remedies, both for situations where the accused is in and out of custody. Those remedies should be clear and contain real penalties to encourage the government and the judiciary to try cases in a manner that comports with the Sixth Amendment. The only remedy that would guarantee speedy trial laws are adhered to is dismissal with prejudice. A remedy of dismissal without prejudice does not solve the speedy trial problem because prosecutors can just dismiss the case when the deadline expires and then recharge it. However, dismissal with prejudice as a remedy alone does not solve this problem because the prosecution could dismiss the case before the prosecution is in violation of a person's speedy trial right.[349] This has been a criticism of the Colorado statute,[350] because the Colorado statute is silent on recharged cases.[351] My proposed law explicitly gives direction on recharged cases,[352] like the Alaska[353] and Florida[354] rules of criminal procedure. Finally, it is imperative that the remedy be mandatory, instead of discretionary, for the

349. *See* Meehan v. Jefferson Cnty. Court, 762 P.2d 725, 726 (Colo. App. 1988); People v. Dunhill, 570 P.2d 1097, 1099 (Colo. App. 1977) ("We hold that the six month period commences upon the arraignment for the last information."); People v. Wilkinson, 555 P.2d 1167, 1170 (Colo. App. 1976); Zoglo, *supra* note 1, at 903.

350. *See* Zoglo, *supra* note 1, at 903–04.

351. *See* COLO. REV. STAT. § 18-1-405 (2021).

352. *See infra* note 378 and accompanying text (subsection (5) of proposed statute).

353. ALASKA R. CRIM. P. 45(c)(2).

354. FLA. R. CRIM. P. 3.191(o).

court.[355]

The proposed framework at the end of this section finds precedent in the Federal,[356] Colorado,[357] Nebraska,[358] California,[359] and New York[360] statutes, and the Alaska[361] and Florida[362] rules of criminal procedure. Like the Colorado statute,[363] the primary authority used to draft this proposed law, the speedy trial right automatically triggers upon entry of a not guilty plea. However, the timeframes I suggest are shorter than many of those found in

355. Because it was important to avoid a discretionary standard, my proposed statute avoids using the word "may." *See infra* note 376 and accompanying text. The Supreme Court has made it clear that "may" in a statute "*clearly* connotes discretion." Biden v. Texas, 597 U.S. 785, 802 (2022) (quoting Opati v. Republic of Sudan, 590 U.S. 418, 419 (2020)); *see also* Kevin Tobia et al., Essay, *Statutory Interpretation from the Outside*, 122 COLUM. L. REV. 213, 253 (2022) ("The mandatory/permissive canon provides that mandatory words, such as 'shall,' impose a duty while permissible words, such as 'may,' grant discretion."). Many states have very weak speedy trial statutes that use "may." *See, e.g.*, *supra* note 180 and accompanying text. The South Dakota speedy trial statutes show a good comparison between discretionary and mandatory statutes because South Dakota has a discretionary statute that applies when people are arrested and there is a delay in charging. *See* S.D. CODIFIED LAWS § 23A-44-3 (1978) ("If there is unnecessary delay in presenting a charge to a grandy jury or in filing an information against a defendant who has been held to answer to a circuit court, or if there is unnecessary delay in bringing a defendant to trial, a court may dismiss his indictment, information, or complaint."). South Dakota's other speedy trial statutue is much less discretionary that applies when people have been formally charged but there is a delay in the trial. *See id*. § 23A-44-5.1(5) ("If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed. Unless the prosecuting attorney rebuts the presumption of prejudice, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged.").

356. 18 U.S.C. §§ 3161–74 (2018).

357. COLO. REV. STAT. § 18-1-405 (2021).

358. NEB. REV. STAT. §§ 29-1207–1208 (2010).

359. CAL. PENAL CODE § 1382 (West 2009). I specifically reviewed the California statute for subsection (1) because I thought it was important to include a remedy in situations where there is a delay of charging when someone is arrested and held in custody prior to a formal charging decision. *See id.* The Colorado statute does not include a provision that covers these situations. *See* COLO. REV. STAT. § 18-1-405 (2021). It is important for state speedy trial statutes to cover both scenarios since the caselaw is clear that the speedy trial right can attach as early as a formal arrest. *See* United States v. Marion, 404 U.S. 307, 320 (1971).

360. N.Y. CRIM. PROC. LAW §§ 30.20–.30 (McKinney 2020).

361. ALASKA R. CRIM. P. 45.

362. FLA. R. CRIM. P. 3.191.

363. *See* COLO. REV. STAT. § 18-1-405(1) (2021).

Alaska,[364] Colorado,[365] Florida,[366] and Nebraska;[367] and have portions that are considerably longer than California,[368] New York,[369] and the federal statute.[370] Mirroring the federal statute[371] and Florida Rule of Criminal Procedure,[372] my

364. In Alaska, the right is automatically triggered by arraignment, and the prosecution gets 120 days to try the case, regardless of the offense level or amount of exposure. *See* ALASKA R. CRIM. P. 45(b). Because the right in Alaska is triggered by arraignment and my proposed law has the right triggered by a not guilty plea, it is possible that Alaska's timeframe would actually be shorter in some cases. *See id.*

365. In Colorado, the right is automatically triggered with a not guilty plea, and the prosecution has six months to try the case, regardless of the offense level or amount of exposure. *See* COLO. REV. STAT. § 18-1-405(1) (2021). Therefore, my proposed law would have shorter timeframes than Colorado in all cases except those that have more than twenty-five years of prison time. *See infra* note 376 and accompanying text (focusing on Subsection (2) which lays out the timeframes for the proposed statute/rule based on offense level).

366. In Florida, the right is automatically triggered by the initial arrest, and the prosecution gets ninety days to try a misdemeanor-level case and 175 days to try a felony-level case. *See* FLA. R. CRIM. P. 3.191(a). However, in Florida, the timeframe can be shortened to sixty days in any case where a written speedy trial demand is made by the accused, which could make the timeframe very similar to, or even shorter than, the ones I suggest. *See id.*; *infra* note 376 and accompanying text (focusing on Subsection (2) which lays out the timeframes for the proposed statute based on offense level).

367. In Nebraska, the right is automatically triggered from the date of arraignment, and the prosecution gets six months to try the case, regardless of the level or amount of exposure. *See* NEB. REV. STAT. § 29-1207 (2010). Because the right in Nebraska is triggered by arraignment and my proposed law has the right triggered by a not guilty plea, it is possible that Nebraska's timeframe would actually be shorter in some cases. *See id.*; *infra* note 376 and accompanying text (focusing on Subsection (2) which lays out the timeframes for the proposed statute/rule based on offense level).

368. In California, the right typically triggers after arraignment, and the prosecution gets sixty days to bring a felony case and only thirty or fourty-five days to bring a misdemeanor or infraction case, depending on custody status. *See* CAL. PENAL CODE § 1382(a) (West 2009). Thirty days for a misdemeanor or infraction offense if the person accused is in custody and fourty-five days for a misdemeanor or infraction offense if the person accused is out of custody. *Id.* The right is automatically triggered after arraignment in felony cases, but in misdemeanor and infraction cases, the right is automatically triggered by either arraignment or entry of a plea (whichever occurs later). *Id.*

369. In New York, the right is automatically triggered after arraignment, and the timeframe for criminal cases ranges from fifteen days to six months. *See* N.Y. CRIM. PROC. LAW § 30.30(1)–(3) (McKinney 2020). For cases where the accused person is out of custody, the prosecution gets sixty or ninety days for misdemeanor level cases depending on the maximum penalty of the misdemeanor charged, and six months for cases including at least one felony (excluding cases where there was a death). *See id.* For cases where the accused person is in custody, the prosecution gets fifteen or thirty days for misdemeanor level cases depending on the maximum penalty of the misdemeanor charged, and ninety days for cases including at least one felony (excluding cases where there was a death). *See id.*

370. 18 U.S.C. § 3161(c)(1) (2018).

371. *Id.* § 3161(c)(2).

372. FLA. R. CRIM. P. 3.191(b)(2) (in cases where the accused demands a speedy trial, "the court

proposed law also includes a minimum time before the trial can start.[373] A minimum timeframe is necessary to prevent courts from setting trial dates that are unreasonably close to the entry of the not guilty plea in an attempt to force the accused to waive their speedy trial rights. However, having the triggering point at an entry of a not guilty plea, instead of arraignment or arrest, should also alleviate this potential problem.

Like the California statute[374] and the Florida Rule of Criminal Procedure,[375] my proposed framework considers the complexity among cases. Specifically, my proposed law acknowledges the difference in trying high-level felonies and lower-level cases, allowing the most time for preparation in a felony matter where the prison exposure is twenty-five years or more. Additionally, my proposed framework allows for exceptions if the parties feel that the case is particularly complicated and not triable in the ordinary timeframe. Like the New York[376] and Federal[377] statutes, my proposed framework considers a shortened timeframe and an earlier remedy of release from custody for accused person in custody. The complexity of the case and the custody status of an accused are factors consistent with the guidance from the ABA Standards for Criminal Justice.[378] Finally, and most importantly, the proposed law provides a remedy of dismissal with prejudice in both cases where the person accused is in custody or out on bail. Therefore, unlike the language of the New Jersey statute[379] and the application of the Wisconsin statute in practice, where the speedy trial right only attaches if the person is in custody,[380] my proposed statute applies whether the accused is in or out of custody while awating trial.

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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.").

373. *See infra* note 376 and accompanying text (focusing on Subsection (4)).

374. CAL. PENAL CODE § 1382(a) (West 2009).

375. FLA. R. CRIM. P. 3.191(a)–(b).

376. N.Y. CRIM. PROC. LAW §§ 30.20–.30 (McKinney 2020).

377. 18 U.S.C. §§ 3161, 3164 (2018).

378. ABA SPEEDY TRIAL AND TIMELY RESOLUTION, *supra* note 314, at 2 (Standard 12-1.3).

379. *See* N.J. STAT. ANN. § 2A:162-22 (West 2017).

380. *See* WIS. STAT. § 971.10 (1997); *What Happens in Wisconsin if You Don't Get a Speedy Trial?*, NICHOLSON GOETZ & OTIS, S.C. (Sept. 3, 2013), https://nglawyers.com/what-happens-in-wisconsin-if-you-dont-get-a-speedy-trial/.

An ideal speedy trial statute or rule of criminal procedure[381] might read as follows:

> **(1) Speedy Trial Time Limits Before Formal Charging.** If a person has been arrested and held in custody and no formal charges are brought within ten (10) days, then the person shall be discharged from custody and no charges may be brought for acts arising out of that criminal episode.
>
> **(2) Speedy Trial Generally.** Except as otherwise provided in this section, if a defendant is not brought to trial on the issues raised by the charging document after the entry of a not guilty plea during the following timeframes then the pending charges shall be dismissed. Additionally, the defendant shall not again be charged with the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode. The timeframes are the following:
>
> (a) Sixty (60) days for offense(s) where the maximum term of imprisonment is one year or lower;
>
> (b) Ninety (90) days for offense(s) where the maximum term of imprisonment is less than 25 years; or
>
> (c) One-hundered and eighty (180) days for offense(s) where the maximum term of imprisonment is 25 years or more.
>
> **(3) Release for In-Custody Defendants.** Where a defendant is in custody for a criminal action, the timelines listed in subsections (2)(a) and (2)(b) of this section are reduced to half. If a defendant is not brought to trial on the issues raised by the charging document after the entry of a not guilty plea during those timeframes then the defendant must be released on their own recognizance. This section

381. At this point, having a specific provision related to the COVID-19 pandemic seems unnecessary since courts are largely operating as they were pre-COVID times. *See, e.g.*, Barb Markoff et al., *Illinois' Speedy Trial Law to Be Reinstated After Pandemic Suspension*, ABC 7 CHI. (Sept. 30, 2021), https://abc7chicago.com/illinois-laws-right-to-a-speedy-trial-coroavirus-covid-pandemic/11066981/. However, if a legislature or state supreme court felt that a COVID provision was necessary, then I would suggest adding a provision outlined in Appendix F. *See infra* Appendix F.

only applies to cases where the maximum term of imprisonment is less than 25 years.

(4) Speedy Trial Minimum Time Period. Unless the defendant consents in writing to the contrary, the trial shall not commence less than forty-five (45) days after the entry of a not guilty plea for offense(s) where the maximum term of imprisonment is 25 years or more, and thirty (30) days after the entry of a not guilty plea for all other cases.

(5) Speedy Trial Time Limits for Recharged Offense(s). If offense(s) are dismissed prior to a violation of this Statute/Rule[382] and refiled, trial must begin by the same length as the timeframes listed in subsections (2)(a)–(c) of this section after the date of the not guilty plea in the original offense(s) that was dismissed.

(6) Speedy Trial Time Limits for a New Trial. If trial results in conviction which is reversed on appeal, any new trial must begin by the same length as the timeframes listed in subsection (2)(a)–(c) of this section after the date of the receipt by the trial court of the mandate from the appellate court.

(7) Speedy Trial Time Limits When a Defense Requested Continuance Is Granted. If a defendant requests and is granted a continuance for trial, the period within which the trial shall be had is extended for an additional 60-day period from the date upon which the continuance was granted.

(8) Speedy Trial Time Limits When a Defendant Fails to Appear. If a defendant fails to make a court appearance and a warrant is issued, the defendant shall be brought to trial within the same timeframes listed in subsections (2)(a)–(c) of this section with the time starting on the day the defendant next appears in court.

(9) Speedy Trial Time Limits When a Prosecution-Requested Continuance Is Granted. If the prosecuting attorney requests and

382. Proposed Statute should be used for legislation and Rule should be used for a rule of criminal procedure.

is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (2) of this section, unless:

(a) the defendant or by their counsel in open court of record expressly agrees to the continuance; or

(b) a dated written agreement to the continuance signed by the defendant is filed with the court. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.

(10) Timing of Motion to Dismiss. To be entitled to a dismissal under subsection (2) of this section, the defendant must move for dismissal prior to the start of their trial or prior to the entry of a plea of guilty to the charge or an included offense.

(11) Excluded Time Periods. In computing the time within which a defendant is brought to trial as provided in subsection (2) of this section, the following periods of time are excluded:

(a) Any period during which the defendant is incompetent to stand trial, or is unable to appear by reason of illness or physical disability, or is under observation or examination at any time after the issue of the defendant's mental condition, insanity, incompetency, or impaired mental condition is raised;

(b) Any period of delay caused by an interlocutory appeal;

(c) Any period of delay caused by a mistrial, not to exceed sixty (60) days for each mistrial;

(d) In felony cases only, any period of delay not exceeding sixty (60) days resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, 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 this 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 exceptional circumstances of the case and the court enters specific findings with respect to the justification. Exceptional circumstances do not include court calendar congestion, caseload issues, unavailability of the prosecuting attorney for trial, or delay in transporting the accused;
>
> **(12) Speedy Trial Time Limits When There is a Change of Venue.** If the case is subsequently transferred to a court in another county, the period within which trial must be had is extended for an additional sixty (60) days from the date of the first appearance of all of the parties in a court of appropriate jurisdiction in the county to which the case has been transferred.

B. Potential Critiques

Some potential criticisms of my proposed law include: (1) the proposal has gone too far to limit the court's discretion; (2) the penalty is too severe and hurts innocent victims who have no control over how quickly the case is tried; (3) the proposal is too burdensome on system actors to try cases in a timely manner; (4) an accused person is hurt by a trial happening too speedily; and (5) the right should be asserted not automatic. I will address each potential critique in turn.

The first potential critique is that my proposal goes too far to limit the court's discretion. This criticism would likely argue that there should be sections with exceptions to the dismissal with prejudice provision, like the California statute.[383] I considered and rejected adding additional provisions like

383. *See* CAL. PENAL CODE § 1387(a) (West 2023). The California statute allows the prosecution to recharge the case in a case, including a felony, if the court finds: (1) "substantial new evidence has been discovered by the prosecution that would not have been known through the exercise of due diligence at, or prior to, the time of termination of the action[;]" (2) "the termination of the action was the result of the direct intimidation of a material witness, as shown by a preponderance of the evidence[;]" (3) the dismissal was the result of the failure to appear by the alleged victim who had been personally subpoenaed, but this exception only applies for six months from the date of the original dismissal and

the California statute because subsection (11)(d) of my proposed statute allows the prosecution to get a continuance over the accused person's objection prior to a dismissal in any case that includes a felony offense.[384] Additionally, a new criminal charge can be brought against the accused if the prosecution concludes that the accused intimdated a witness.[385] The prosecution would be fully entitled to bring a witness-intimidation action even if the underlying case was dismissed under my proposal. My proposed law gives enough leniency by allowing opportunity for continuances and extending timeframes for various situations that could delay the trial, like competency proceedings or a missed court appearance, but still has a real penalty that would force system actors to effectuate the accused's constitutional right to a speedy trial.

A similar criticism is that the penalty is too severe and hurts innocent victims who have no control over how quickly the case is tried. This is a real risk; however, that risk should serve as an incentive to both the prosecution and the judiciary to comply with the speedy trial provisions. Especially considering the majority of district attorneys[386] and state judges[387] are elected positions, an aggrieved alleged victim would be a prime candidate for negative political publicity. A potential additional response to this possible risk is an alleged victim's ability to seek a civil remedy in the event they are not able to

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can only be used as an exception once; or (4) the dismissal was the result of the alleged victim being found in contempt of court, but this exception only applies for six months from the date of the original dismissal and can only be used as an exception once. *Id.* Additionally, the California statute allows the prosecution to recharge the case in a misdemeanor case of domestic violence if the dismissal was the result of the failure to appear by the alleged victim who had been personally subpoenaed, but this exception only applies for six months from the date of the original dismissal and can only be used as an exception once. *Id.* § 1387(b)

384. *See supra* note 381 and accompanying text (focusing on Subsection (11)(d)).

385. *See, e.g.*, CAL. PENAL CODE § 136.1 (West 1997) (delineating acts aimed to intimidate witnesses puishable by misdemeanor or felony).

386. *See* CARISSA BYRNE HESSICK, THE PROSECUTORS AND POLITICS PROJECT NATIONAL STUDY OF PROSECUTOR ELECTIONS 4 (2020), https://law.unc.edu/wp-content/uploads/2020/01/National-Study-Prosecutor-Elections-2020.pdf. "Forty-five states elect prosecutors on the local level." *Id.* Rhode Island does not elect local prosecutors, but "[a]ll criminal cases are handled by the state Attorney General, who is elected." *Id.* at 266. The only states with appointments instead of elections are Alaska, Connecticut, Delaware, and New Jersey. *Id.* at 18, 39–40, 207.

387. *See* Richard W. Garnett & David A. Strauss, *Article III, Section One Common Interpretation*, NAT'L CONST. CTR., https://constitutioncenter.org/interactive-constitution/interpretation/article-iii/clauses/45 (last visited Mar. 10, 2024) ("Most state court judges—unlike federal judges—are elected, not appointed; and some have to be re-elected, or approved by the voters, every few years."); *Significant Figures in Judicial Seclection*, BRENNAN CTR. FOR JUSTICE, www.brennancenter.org/rethinking-judicial-selection/significant-figures (last updated Apr. 14, 2023) ("Most states use elections as some part of their selection process – 39 states use some form of election at some level of court.").

achieve justice in the criminal courts because the criminal case is dismissed for a speedy trial violation.[388] As discussed previously, alleged victims also receive a benefit from the trial happening in a timely manner, which is why some states include statutes that specifically address an alleged victim's right to a speedy trial.[389] Finally, although there is a risk, having a significant consequence to both the prosecution and the judiciary is the only way to ensure speedy trial rights are being honored.[390]

The third potential critique is the proposal is too burdensome on the system actors to try cases in a timely manner. This critique is rooted in underfunded and overburdened court systems.[391] Those arguments could be rooted in a belief that accused people will feel pressure by those system actors to resolve their case quickly with a guilty plea over fear of trial.[392] This critique could come from within the defense community, especially public defense

388. *See generally* ABA SPEEDY TRIAL AND TIMELY RESOLUTION, *supra* note 314, at 10–11 (Standard 12-3.1) ("The interest of the public, including victims and witnesses, in timely resolution of criminal cases is different from the defendant's right to a speedy trial. This interest should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial.").

389. *See supra* note 215 and accompanying text (showing state statutes in Alabama, Kentucky, New Hampshire, and Rhode Island framing the right to a speedy trial as a victim's right).

390. *See* Bromwich et al., *supra* note 22 ("Since the law was passed, the number of cases dismissed in New York City because of speedy trial violations has risen sharply. There were 27,108 such dismissals in the city in the first 10 months of 2022, compared with 9,481 in 2019, a 186 percent increase. While prosecutors say those numbers show the burden that the law has imposed, defense lawyers point to them as evidence that prosecutors were all too willing to violate defendants' rights.").

391. *See* Brooks Holland, *The Two-Sided Speedy Trial Problem*, 90 WASH. L. REV. ONLINE 31, 39 (2015) ("[D]efense lawyers delay trials because of high caseloads . . . . Judges, in turn, delay trials because they have packed dockets and do not have the staff or courtrooms to resolve pre-trial issues efficiently . . . . Prosecutors also are not ready for trial due to their own resource constraints.").

392. *See id.* at 38 (describing the system as two-sided, one side where trials do not happen in a timely manner and the other side "where the system pushes defendants to plead guilty, and to plead guilty quickly"). Holland's piece is a response to Shon Hopwood's article. *Cf.* Hopwood, *supra* note 2, at 710–11. Holland's concern is that increased implementation of timelines imposed by speedy trial laws, like the Speedy Trial Act in federal courts, "may create an obsession for speedy dispositions, regardless of the fairness of the result." Holland, *supra* note 391, at 35 (quoting Argersinger v. Hamlin, 407 U.S. 25, 34 (1972)). However, Holland's criticism is rooted in accused people feeling pressured to plea quickly, not in the system having trials too quickly. *Id.* at 38. I share the concern of the "meet-and-plead" system, but I do not believe that forcing system actors to abide by a speedy trial statute would exacerbate the existing problem. Additionally, as Holland acknowledges, often the decision to plead guilty at the first appearance is to avoid pretrial incarceration. *See id.* at 37. With the understanding that the prosecution will be held to the strict timelines imposed by the proposed statute and if the prosecution fails to abide by those timelines, then the case would be dismissed with prejudice, the accused people who cannot afford bail might feel less pressure to plead right away because they would be aware of the timeline and remedy.

offices who are consistently underfunded and dealing with excessive caseloads.[393] This is a concern I share,[394] but I do not agree that forcing system actors to abide by a speedy trial law would exacerbate the existing problem, or that the systemic issue with funding is a reason we should not have speedy trial laws that have real remedies. Additionally, most accused people already feel the pressure to plead guilty just to avoid trial,[395] and the added pressure applied to the prosecution and judiciary would result in more favorable plea offers for the accused. Anecdotally, in practice, I never received a worse plea offer on the day of trial than I had received throughout the pendency of the case. Often, the best negotiation takes place as the panel of jurors is lining up outside of the courtroom. Arguably the prosecution being required to be comply with the right to a speedy trial would require prosecution offices to make decisions about their charging priorities because of the time constraints.[396]

The fourth potential criticism, likely a criticism from within the defense community, is that an accused person is hurt by a trial happening too quickly. That criticism could stem from the reality in some cases that the defense's case gets better with time—as witnesses' memories deteriorate, they become less cooperative with the prosecution, or the prosecution loses contact with them altogether.[397] In response to those criticisms, I would highlight that the

393. *See* Cullen, *supra* note 328, at 677 (stating that "[t]he severe underfunding of public defense offices has caused public defenders to have unmanageable caseloads, which negatively impacts their client."); *see also* Steven Zeidman, Padilla v. Kentucky*: Sound and Fury, or Transformative Impact*, 39 FORDHAM URB. L.J. 203, 207 (2011) ("It is also beyond question that many of these faulty pleas are the result of the chronic underfunding and resultant overburdening of public defenders who labor under crushing caseloads.").

394. *See* Cullen, *supra* note 328, at 677.

395. *See* Clint Smith & Josie Duffy Rice, *Justice in America Episode 1: Justice for the Rich, Money Bail*, THE APPEAL (July 25, 2018), https://theappeal.org/justice-in-america-episode-1-justice-for-the-rich-money-bail/ ("The bail system was, as the federal judge found, coercing tens of thousands of guilty pleas every single year. That's how it's functioning all over the country. We don't have another way of processing all of the people that police are arresting and disposing of their cases unless we coerce them into pleading guilty. And what we're saying to them now all over the country is, if you plead guilty today, we'll let you out of jail. But if you want to fight your case and you can't afford bail you'll be stuck in jail.").

396. *See* Russell M. Gold, *The Price of Criminal Law*, 56 ARIZ. ST. L.J. (forthcoming 2024) (arguing "budget constraints provide an important accountability measure for criminal law that counties should be empowered to and burdened with making the hard choices.").

397. *See generally* Tiffany Dawn Bryan, The Fallibility of Eyewitness Testimony: An Examination of Memory and Its Role in Inaccurate Testimony (Apr. 30, 2003) (Senior Honors Project, University of Tennessee, Knoxville),

proposed law does allow for agreed upon continuances.[398] Additionally, I would argue the amount of accused people hurt by the lack of any real speedy trial far exceeds the number of people who could benefit from their criminal case pending for years.[399] My proposal also has the triggering mechanism as the decision to plead not guilty[400] and has a provision to prevent the court from setting the trial too close to the entry of that not guilty plea.[401] I included both provisions with careful consideration of this possible criticism. The decision to enter the not guilty plea could be months into the case if that is the strategic decision made by the defense, or if that is what the complexity of the case requires to properly prepare for trial.[402] The minimum time provision is to avoid courts from setting the trial immediately after the not guilty plea, which will hopefully alleviate the pressure to waive speedy trial due to unpreparedness by the defense.

Finally, to address the last potential critique, I considered and rejected a proposed law that required the accused person to assert explicitly their speedy trial right. The benefit of requiring the accused person assert their right rather than it be automatic is based on the third factor in *Barker*, which is assertion of right.[403] In *Barker*, the Court went so far as to state: "We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial."[404] In review of cases with *Barker* analysis in states

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https://trace.tennessee.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1628&context=utk_chanhonoproj ("Eyewitness testimony can play a large role in the conviction of a defendant for the commission of a crime. The testimony witnesses give is made up of memories that formed from events that occurred weeks, months, sometimes even years in the past. The reliability of memory is essential in order for trials to result in a fair verdict and for justice to be served. Psychological studies have repeatedly shown that memory does not work like a tape recorder, people do forget, omit, and replace details, whether consciously or unconsciously."); Joyce W. Lacy & Craig E. L. Stark, *The Neuroscience of Memory: Implications for the Courtroom*, 14 NATURE REVIEWS NEUROSCIENCE 649, 651–52 (2013) (explaining the different ways that witness's memories deteriorate).

398. *See supra* note 381 and accompanying text (discussing proposed statute/rule).

399. *See supra* note 22 and accompanying text. The New York example discussed in note 22 is an example of the extraordinary results that can be achieved with speedy trial laws with real remedies.

400. *See supra* note 381 and accompanying text (focusing on Subsection (2) of the proposed statute/rule).

401. *See supra* note 381 and accompanying text (focusing on Subsection (4) of the proposed statute/rule).

402. *See generally How Criminal Cases Work*, CAL. COURTS., www.courts.ca.gov/1069.htm?rdeLocaleAttr=en (last visited Mar. 10, 2024) (explaining the different stages when defendants can either plead guilty or not guilty or change their plea).

403. *See* Barker v. Wingo, 407 U.S. 514, 531–32 (1972).

404. *Id.* at 532.

where the right was automatically triggered, the court often counted this factor against the accused if the person did not have additional affirmative efforts requesting a speedy trial.[405] In a place where the right is automatic, it is unrealistic to expect the accused or their lawyers to frequently make additional affirmative asks of a right that is automatic. Additionally, this does allow for parties to make a strategic decision about when the case is ready to be tried. However, a greater risk exists if the right is not automatic because the accused person would have to rely on their counsel for information about the right and when to assert it.[406] Therefore, the proposed law includes an automatic right, requiring the accused person to do nothing to assert the protections guaranteed by the right.

V. CONCLUSION

Legislatures and courts should address the nonexistent speedy trial right by implementing legislation or rules of criminal procedure that ensure an accused person has an actual right to a speedy trial. Legislatures and courts can use my proposed statute/rule of criminal procedure in Part IV to address this problem. The constitutional right to a speedy trial can only be achieved if laws that have strict timelines and a remedy with real consequences are enacted and followed. Dismissal with prejudice is the only remedy that will ensure change.

405. *See, e.g.*, Guice v. State, 952 So. 2d 129, 141 (Miss. 2007) (noting that demanding dismissal for a speedy trial violation is not the same as demanding a speedy trial); Robinson v. State, 169 So. 3d 916, 922 (Miss. Ct. App. 2014) (showing for purposes of statutory speedy trial analysis, the accused's multiple motions to dismiss on speedy trial grounds did not constitute assertions of right to speedy trial to the court); People v. Bost, 770 P.2d 1209, 1217 (Colo. 1989) (en banc) ("[I]t must be determined whether Bost diligently sought to be brought to trial on the Colorado charges. To this end, it is significant that Bost never attempted to contact the appropriate Colorado authorities until after the August 12, 1985, detainer was filed."); Moody v. Corsentino, 843 P.2d 1355, 1367 (Colo. 1993) (en banc) (showing the court factored the "limited efforts by Moody to seek a speedy sentencing" against him in their speedy trial analysis); People v. Small, 631 P.2d 148, 156 (Colo. 1981) ("A defendant's delay in asserting his right to a speedy trial is a significant factor to weigh in determining whether he was denied his constitutional right to a speedy trial.").

406. *See generally supra* notes 403–405 and accompanying text (putting the responsibility on the defendant to assert his right to a speedy trial).

APPENDIX A

Jurisdiction	**State Constitution**	**State Statute**	**State Rule(s) of Criminal Procedure**
Ala.	ALA. CONST. art. I, § 6	ALA. CODE § 15-25-6 (2022) (only in criminal cases and juvenile proceedings involving violent offenses where the victim or a witness to the offense is a child or protected person)	ALA. R. CRIM. P. 8.1–8.3
Alaska	ALASKA CONST. art. I, § 11	N/A	ALASKA R. CRIM. P. 45
Ariz.	ARIZ. CONST. art. II, § 24	N/A	ARIZ. R. CRIM. P. 8; 13.2
Ark.	ARK. CONST. art. II, § 10	N/A	ARK. R. CRIM. P. 28.1–28.3; 30.1–30.2
Cal.	CAL. CONST. art. I, § 15, cl. 1	CAL. PENAL CODE § 1382 (West 2009); §1387 (West 2022)	N/A
Colo.	COLO. CONST. art. II, § 16	COLO. REV. STAT. § 18-1-405 (2021)	COLO. R. CRIM. P. 48
Conn.	CONN. CONST. art. I, § 8	CONN. GEN. STAT. § 54-82m (2007)	N/A
Del.	DEL. CONST. art. 1, § 7	N/A	N/A[407]

407. Delaware does not have a statute or rule of criminal procedure addressing speedy trial. However, Delaware does include guidance from the court in their Judicial Branch Operating Procedures. The Operating Procedures provide guidance, but "are subordinate to the Judicial Branch's duty to comply with the Constitution, statutes, Court-specific rules, and its overarching commitment to do justice in the diverse procedural circumstances in which cases arise." *Operating Procedures: Introduction*, https://courts.delaware.gov/aoc/operating-procedures/op-intro.aspx (last visited Apr. 5,

Jurisdiction	**State Constitution**	**State Statute**	**State Rule(s) of Criminal Procedure**
Fla.	FLA. CONST. art. I, § 16	N/A	FLA. R. CRIM. P. 3.134; 3.191
Ga.	GA. CONST. art. I, § 1, ¶ XI(a)	GA. CODE ANN. § 17-7-170 to -171 (2011)	N/A
Haw.	HAW. CONST. art. I, § 14	N/A	HAW. R. PEN. P. 48
Idaho	IDAHO CONST. art. I, § 13	IDAHO CODE § 19-106 (1864); § 19-3501 (2004)	N/A
Ill.	ILL. CONST. art. I, § 8	725 ILL. COMP. STAT. 5/103-5 (2020)	N/A
Ind.	IND. CONST. art. 1, § 12 ("without delay" instead of "speedy")	IND. CODE § 35-34-1-4 (1983)	IND. R. CRIM. P. 4
Iowa	IOWA CONST. art. I, § 10	N/A	IOWA R. CRIM. P. 2.33
Kan.	KAN. CONST. BILL OF RTS. § 10	KAN. STAT. ANN. § 22-3401 to 22-3402 (2023)	N/A
Ky.	KY. CONST. § 14	KY. REV. STAT. ANN. § 421.510 (West 2020) (only for sexual offenses involving a victim who is less than sixteen years old)	KY. R. CRIM. P. 9.02

2024). Additionally, courts are able to depart from the Operating Procedures "[w]hen the need to do justice requires[.]" *Id.* The pertinent Operating Procedures are locatedin Appendices D-2 and D-3. *See* DEL. COURTS, OPERATING PROCEDURES: POLICY ON SPEEDY TRIAL GUIDELINES app. D-2, https://courts.delaware.gov/forms/download.aspx?id=83548; *id.* at app. D-3, https://courts.delaware.gov/forms/download.aspx?id=83558.

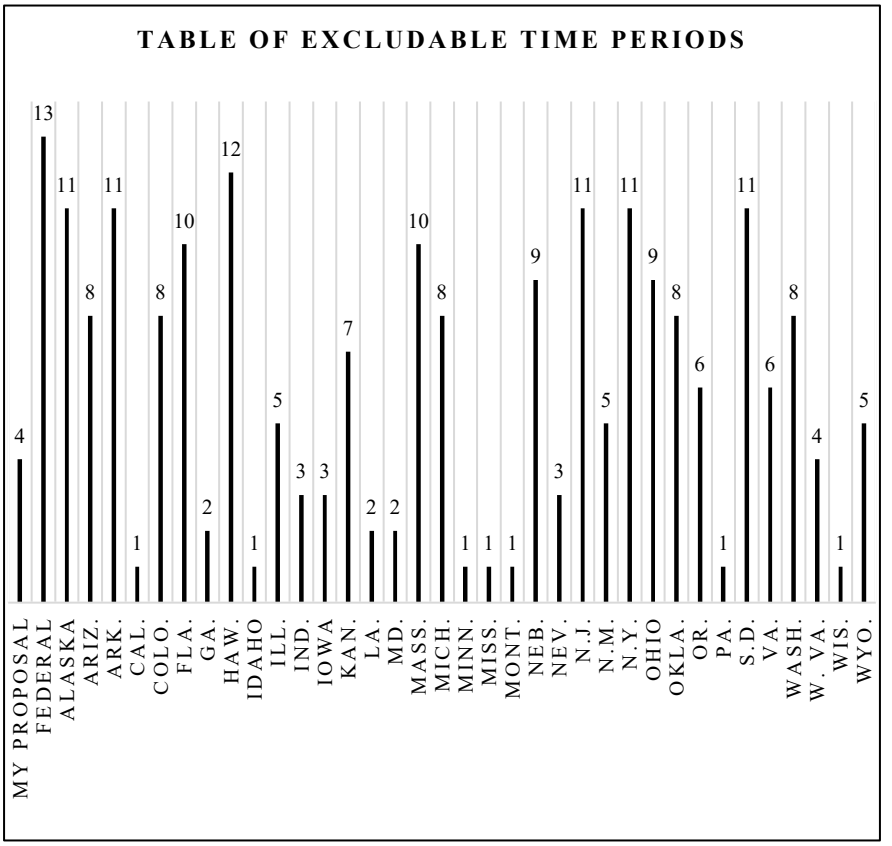
Jurisdiction	**State Constitution**	**State Statute**	**State Rule(s) of Criminal Procedure**
La.	LA. CONST. ANN. art. I, §§ 16; 22	LA. CODE CRIM. PROC. ANN. art. 701 (2021)	N/A
Me.	ME. CONST. art. I, § 6	N/A	N/A
Md.	MD. CONST. DECL. OF RTS. art. 21.	MD. CODE ANN., CRIM. PROC. § 6-103 (2023)	N/A
Mass.	MASS. CONST. pt. I, art. XI. ("without delay" instead of "speedy")	N/A	MASS. R. CRIM. P. 36(b)
Mich.	MICH. CONST . art. 1, § 20	MICH. COMP. LAWS § 767.38; § 768.1 (1927)	MICH. CT. R. 6.004
Minn.	MINN. CONST. art. I, § 6	N/A	MINN. R. CRIM. P. 6.06; 11.09
Miss.	MISS. CONST. art. I, § 26	MISS. CODE ANN. § 99-17-1 (1976)	N/A
Mo.	MO. CONST. art. I, § 18(a)	MO. REV. STAT. § 545.780 (1986)	N/A
Mont.	MONT. CONST. art. II, § 24.	MONT. CODE ANN. § 46-1-506 (2007); § 46-13-401 (1991)	N/A
Neb.	NEB. CONST. art. I, § 11	NEB. REV. STAT. § 29-1201 (2020); 29-1205 to 1206 (1971); 1207 to 1208 (2010); 1209 (1971)	N/A
Nev.	N/A	NEV. REV. STAT. § 174.511 (1983); § 174.515 (1995); § 174.519 (1997);	N/A

Jurisdiction	State Constitution	State Statute	State Rule(s) of Criminal Procedure
		§ 178.556 (1991); § 178.562 (2011)	
N.H.	N.H. CONST. pt. I, art. 14th ("without delay" instead of "speedy")	N.H. REV. STAT. ANN. § 632-A:9 (2004) (only for sexual offenses involving a victim 16 and under, or 65 and over)	N/A
N.J.	N.J. CONST. art. I, ¶ 10	N.J. STAT. ANN. § 2A:162-22 (West 2017)	N.J. CT. R. 3:25-4
N.M.	N.M. CONST. art. II, § 14	N/A	N.M. R. CRIM. P. METRO. CT. 7-506
N.Y.	N/A	N.Y. CRIM. PROC. LAW § 30.20 (McKinney 2014); § 30.30 (McKinney 2020)	N/A
N.C.	N.C. CONST., art. I, § 18 ("without . . . delay" instead of "speedy")	N.C. GEN. STAT. § 15-10 (1913); § 15A-954 (1973)	N/A
N.D.	N.D. CONST. art. I, § 12	N.D. CENT. CODE § 29-01-06 (2009)	N.D. R. CRIM. P. 48
Ohio	OHIO CONST. art. I, § 10	OHIO REV. CODE ANN. § 2945.71–.73 (LexisNexis 2022)	N/A
Okla.	OKLA. CONST. art. II, § 20	OKLA. STAT. tit. 22, § 13 (1910); § 812.1–.2 (1999)	N/A
Or.	OR. CONST. art. I, § 10 ("without	OR. REV. STAT. § 135.745 (2023);	N/A

Jurisdiction	State Constitution	State Statute	State Rule(s) of Criminal Procedure
	delay" instead of "speedy")	§ 135.746 (2014); § 135.748 (2017); § 135.752 (2014)	
Pa.	PA. CONST. art. I, § 9	N/A	PA. R. CRIM. P. 600
R.I.	R.I. CONST. art. I, § 10	11 R.I. GEN. LAWS § 1-37-11.2 (1988) (only for sexual offenses involving victims 14 and under, or 65 and over)	N/A
S.C.	S.C. CONST. art. I, § 14	N/A	N/A
S.D.	S.D. CONST. art. VI, § 7	S.D. CODIFIED LAWS § 23A-16-3; § 23A-44-3; § 23A-44-4; § 23A-44-5; § 23A-44-5.1 (1978)	N/A
Tenn.	TENN. CONST. art. I, § 9	TENN. CODE. ANN. § 40-14-101 (1932); § 40-18-103 (1981)	N/A
Tex.	TEX. CONST. art. I, §10	TEX. CODE CRIM. PROC. ANN. art. 1, § 1.05 (West 1965); art. 17, § 17.151 (West 2005); art. 28, § 28.061 (West 1997)	N/A
Utah	UTAH CONST. art. I, § 12	UTAH CODE ANN. § 77-1-6(1)(f) (West 1980); § 77-1-7 (West 1990);	N/A

Jurisdiction	**State Constitution**	**State Statute**	**State Rule(s) of Criminal Procedure**
		§ 77-38-7 (West 1995)	
Vt.	VT. CONST. Ch I, art. X	VT. STAT. ANN. tit. 13, § 7553b (1993)	N/A
Va.	VA. CONST. art. I, § 8	VA. CODE ANN. § 19.2-242 (2018); § 19.2-243 (2009)	N/A
Wash.	WASH. CONST. art. I, § 22	N/A	WASH. SUPER. CT. R. 3.3
W. Va.	W. VA. CONST. art. III, § 14; § 17 ("without . . . delay" instead of "speedy")	W. VA. CODE § 62-2-12 (1923); § 62-3-21 (1959); § 62-3-1 (1981)	N/A
Wis.	WISC. CONST. art. I, § 7	WIS. STAT. § 971.10 (1997)	N/A
Wyo.	WYO. CONST. tit. 97, art. I, § 10	WYO. STAT. ANN. § 7-11-203 (1987)	WYO. R. PRAC. & P. 48

APPENDIX B[408]



408. The data used for this Figure is in Appendix C. Alabama, Delaware, Kentucky, Maine, Missouri, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Vermont are not included in this Figure because none of those states have statutes or rules of criminal procedure that define the timeframe for the speedy trial right. *See infra* Appendix D. Connecticut is also not included because the Connecticut Statute instructs courts to make their own decisions on excludable time periods. *See* CONN. GEN. STAT. § 54-82m (2007).

APPENDIX C[409]

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
My Proposed Statute/ Rule	X	X	X[412]	X[413]											

409. Alabama, Delaware, Kentucky, Maine, Missouri, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Vermont are not included in this Table because none of those states have statutes or rules of criminal procedure that define the timeframe for the speedy trial right. *See infra* Appendix D. Connecticut is also not included because the Connecticut Statute instructs courts to make their own decisions on excludable time periods. *See* CONN. GEN. STAT. § 54-82m (2007).

410. This category also includes when the accused person is physically unable to appear due to illness or disability.

411. This category is primarily catch-all categories, but the specific provision is explained in each footnote in this column.

412. In my proposed statute/rule of criminal procedure the extension is limited to sixty days in this circumstance.

413. Although my proposed statute/rule of criminal procedure allows for a granted prosecution continuance to be excluded from the timeframe, that exception is limited to felony cases and only permits

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Federal	X 414	X 415	X 416	X 417	X 418	X 419	X 420	X 421	X 422	X 423	X 424	X 425	X 426		

a sixty-day continuance unless there is consent from the accused. Additionally, it requires an additional finding related to evidence and time needed to prepare the case. *See supra* note 381 (Section (11)(d)).

414. 18 U.S.C. § 3161(h)(1)(A), (h)(4) (2018).

415. *Id.* § 3161(h)(1)(C).

416. *Id.* § 3161(e).

417. The statute states:

> Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

Id. § 3161 (h)(7)(A). Additionally, the Federal Statute permits excluded time to obtain evidence from a foreign country if certain findings are made. *Id.* § 3161(h)(8).

418. *Id.* § 3161(h)(1)(E).

419. *Id.* § 3161(h)(1)(B).

420. *Id.* § 3161(h)(1)(D).

421. *Id.* § 3161(h)(1)(F). However, the federal statute does indicate that "time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable." *Id.*

422. *Id.* § 3161(h)(1)(G).

423. *Id.* § 3161(h)(3).

424. *Id.* § 3161(h)(5).

425. *Id.* § 3161(h)(6).

426. "[D]elay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court." *Id.* § 3161(h)(1)(H).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Alaska	X 427	X 428	X 429	X 430		X 431	X 432	X 433			X 434	X 435	X 436		X 437

427. ALASKA R. CRIM. P. 45(d)(1).

428. *Id.*

429. *Id.* at 45(c)(4).

430. *Id.* at 45(d)(3); 45(d)(2) ("The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal offenses, and after consideration of the interests of the crime victim, if known[.]").

431. *Id.* at 45(d)(1).

432. "The period of delay resulting from other proceedings concerning the defendant, including but not limited to motions to dismiss or suppress . . . . [N]o pretrial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period." *Id.*

433. *Id.* at 45(d)(6).

434. *Id.* at 45(c)(2) ("If a charge is dismissed by the prosecution, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the defendant, *the time for trial shall begin running from the date of service of the second charge*." (emphasis added)).

435. *Id.* at 45(d)(5) ("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[.]").

436. *Id.* at 45(d)(1).

437. "Other periods of delay for good cause." *Id.* at 45(d)(7).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Ariz.	X 438		X 439	X 440	X 441		X 442					X 443		X 444	X 445

438. ARIZ. R. CRIM. P. 8.4(a)(1), (b).

439. Under Arizonia's Rule of Criminal Procedure, the extension is limited to sixty days in this circumstance. *Id.* at 8.2(c).

440. *Id.* at 8.4(a)(5).

441. In Arizona, the excludable delay for change of venue are only in cases eligible for transfer to juvenile court. *Id.* at 8.4(a)(7).

442. Specifically, motions challenging the initial probable cause determination, grand jury proceedings, and discovery. *Id.* at 8.4(a)(2)–(3).

443. *Id.* at 8.4(a)(6) ("[J]oinder for trial with another defendant for whom the time limits have not run, if good cause exists for denying severance, but in all other cases, severance should be granted to preserve the applicable time limits[.]").

444. *Id.* at 8.4(a)(4) ("[T]rial calendar congestion, but only if the congestion is due to extraordinary circumstances, in which case the presiding judge must promptly apply to the Supreme Court Chief Justice to suspend Rule 8 or any other Rule of Criminal Procedure[.]").

445. Delays "caused by or on behalf of the defendant, whether or not intentional or willful." *Id.* at (a)(1).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Ark.	X 446	X 447	X 448	X 449		X 450	X 451				X 452	X 453	X 454	X 455	X 456
Cal.			X 457												

446. ARK. R. CRIM. P. 28.3(a).

447. *Id.*

448. *Id.* at 28.2(c).

449. *Id.* at 28.3(c)–(d).

450. *Id.* at 28.3(a).

451. *Id.* ("No pretrial motion shall be held under advisement for more than thirty (30) days, and the period of time in excess of thirty (30) days during which any such motion is held under advisement shall not be considered an excluded period.").

452. *Id.* at 28.3(f) ("The time between a dismissal or nolle prosequi upon motion of the prosecuting attorney for good cause shown, and the time the charge is later filed for the same offense or an offense required to be joined with that offense.").

453. *Id.* at 28.3(g) ("A reasonable period of delay when the defendant is joined for trial with a co-defendant 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 acting with due diligence shall be granted a severance[.]").

454. *Id.* at 28.3(a).

455. *Id.* at 28.3(b).

456. *Id.* at 28.3(h) ("Other periods of delay for good cause.").

457. CAL. PENAL CODE § 1382(a)(2)–(3) (West 2009).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Colo.[458]	X 459	X 460	X 461	X 462	X 463			X 464				X 465			X 466

458. Colorado's statute also had a COVID-19-related excludable timeframe; however, that is not included as a category in this Table because that provision was repealed as of July 1, 2023. *See* COLO. REV. STAT. § 18-1-405(6)(j) (2021) (repealed 2023).

459. *Id.* § 18-1-405(6)(a).

460. *Id.* § 18-1-405(6)(b).

461. *Id.* § 18-1-405(6)(e) ("The period of delay caused by any mistrial, not to exceed three months for each mistrial[.]").

462. Colorado's statute allows for a granted prosecution continuance to be excluded from the timeframe, but it requires an additional finding related to evidence or time needed to prepare the case. *Id.* § 18-1-405(6)(g). Additionally, the continuance cannot exceed six months. *Id.*

463. *Id.* § 18-1-405(6)(i), (7).

464. *Id.* § 18-1-405(6)(d) ("The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained, or he resists being returned to the state for trial[.]").

465. *Id.* § 18-1-405(6)(c).

466. *Id.* § 18-1-405(6)(f) ("The period of any delay caused at the instance of the defendant[.]").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Fla.	X 467	X 468	X 469	X 470		X 471	X 472			X 473		X 474			X 475
Ga.	X 476		X 477												

467. FLA. R. CRIM. P. 3.191(i)(4).

468. *Id.*

469. *Id.* at 3.191(i)(m).

470. *Id.* at 3.191(i)(1)–(2), (l)(2)–(4).

471. *Id.* at 3.191(i)(4).

472. *Id.*

473. *Id.* at 3.191(l)(1) ("[U]nexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial[.]").

474. *Id.* at 3.191(l)(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[.]").

475. *Id.* at 3.191(i)(5) ("[A]dministrative order issued by the chief justice, under Florida Rule of General Practice and Judicial Administration 2.205(a)(2)(B)(iv) or (v), suspending the speedy trial procedures as stated therein."); *id.* at 3.191(l)(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.").

476. GA. CODE ANN. §§ 17-7-170(f), 17-7-171(d) (2011).

477. *Id.* § 17-7-170(e) (this statute only applies to noncapital cases).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Haw.	X 478	X 479		X 480		X 481	X 482			X 483	X 484	X 485	X 486	X 487	X 488
Idaho															X 489

478. HAW. R. PEN. P. 48(c)(1).

479. *Id.*

480. *Id.* at 48(c)(3) ("[P]eriods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel[.]"); *id.* at 48(c)(4).

481. *Id.* at 48(c)(1).

482. *Id.*

483. *Id.* at 48(c)(4)(i) ("[T]he continuance is granted because of the unavailability of evidence material to the prosecution's case, when the prosecutor has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date[.]").

484. *Id.* at 48(c)(6) ("[T]he period between a dismissal of the charge by the prosecutor to the time of arrest or filing of a new charge, whichever is sooner, for the same offense or an offense required to be joined with that offense[.]").

485. *Id.* at 48(c)(7) ("[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[.]").

486. *Id.* at 48(c)(1).

487. *Id.* at 48(c)(2) ("[P]eriods that delay the commencement of trial and are caused by congestion of the trial docket when the congestion is attributable to exceptional circumstances[.]").

488. *Id.* at 48(c)(5) ("[P]eriods that delay the commencement of trial and are caused by the absence or unavailability of the defendant[.]"); *id.* at 48(c)(8) ("[O]ther periods of delay for good cause.").

489. The Idaho statute includes an exception to a speedy trial remedy in cases where the trial has

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Ill.	X 490	X 491		X 492		X 493									X 494
Ind.				X 495										X 496	X 497
Iowa				X 498	X 499										X 500

been postponed because of the accused, but does not give any other direction on excludable timeframes. *See* IDAHO CODE § 19-3501 (2004).

490. 725 ILL. COMP. STAT. 5/103-5(a)–(b) (2023).

491. *Id.*

492. *Id.* at 5/103-5(c).

493. *Id.* at 5/103-5(e).

494. *Id.* at 5/103-5(a)–(b), (e)–(f) (excluding delay "occasioned by the defendant").

495. IND. R. CRIM. P. 4(A)–(C).

496. *Id.* ("Delays caused by a defendant, congestion of the court calendar, or an emergency are excluded from the time period.").

497. *Id.* (creating an exception if the delay was caused by an act of the accused).

498. IOWA R. CRIM. P. 2.33(2)c.

499. *Id.* at (3).

500. *Id.* at (2)a ("[U]nless good cause . . . is shown.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Kan.	X 501		X 502	X 503			X 504							X 505	X 506
La.							X 507								X 508

501. KAN. STAT. ANN. § 22-3402(e)(1)–(2) (2023).

502. *Id.* § 22-3402(f).

503. *Id.* § 22-3402(a)–(b), (e)(3), (g).

504. *Id.* § 22-3402(h) ("When a scheduled trial . . . is delayed because a party has made or filed a motion . . . the time elapsing from the date of the making or filing of the motion . . . until the matter is resolved by court order shall not be considered when determining if a violation . . . has occurred.").

505. *Id.* § 22-3402(e)(4) ("[B]ecause of other cases pending for trial, the court does not have sufficient time to commence the trial of the case within the time fixed for trial by this section. Not more than one continuance of not more than 30 days may be ordered upon this ground.").

506. *Id.* § 22-3402(a)–(b) ("[U]nless the delay shall happen as a result of the application or fault of the defendant[.]"); *id.* § 22-3402(h) ("When a scheduled trial . . . is delayed . . . because the court raises a concern on its own, the time elapsing from the date of . . . the court's raising a concern, until the matter is resolved by court order shall not be considered when determining if a violation . . . has occurred.").

507. The Louisiana statute includes an exception to a speedy trial remedy in cases where "just cause" for the delay is shown. *See* LA. CODE CRIM. PROC. ANN. art. 701 (2021). "Just cause" is defined as "any grounds beyond the control of the State or the Court." *Id.* art. 701(E).

508. *Id.* art. 701(D)(3) ("After a motion for a speedy trial has been filed by the defendant, if the defendant files any subsequent motion which requires a contradictory hearing, the court may suspend . . . or dismiss upon a finding of bad faith the pending speedy trial motion.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Md.				X [509]											X [510]
Mass.	X [511]	X [512]		X [513]		X [514]	X [515]		X [516]	X [517]	X [518]	X [519]	X [520]		

509. MD. CODE ANN., CRIM. PROC. § 6-103(b)(1)(i) (2023) ("For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court . . . on motion of a party.").

510. *Id.* § 6-103(b)(1)(ii) ("For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court . . . on the initiative of the circuit court.").

511. MASS. R. CRIM. P. 36(b)(2)(A)(i)–(ii), 36(b)(2)(C).

512. *Id.* at 36(b)(2)(A)(iv).

513. *Id.* at 36(b)(2)(F) ("Any period of delay resulting from a continuance granted by a judge on his own motion or at the request of the defendant or his counsel or at the request of the prosecutor, if the judge granted the continuance on the basis of his findings that the ends of justice served by taking such action outweighed the best interests of the public and the defendant in a speedy trial.").

514. *Id.* at 36(b)(2)(A)(iii).

515. *Id.* at 36(b)(2)(A)(v).

516. *Id.* at 36(b)(2)(G) ("Any period of time between the day on which a defendant or his counsel and the prosecuting attorney agree in writing that the defendant will plead guilty or nolo contendere to the charges and such time as the judge accepts or rejects the plea arrangement.").

517. *Id.* at 36(b)(2)(B).

518. *Id.* at 36(b)(2)(D).

519. *Id.* at 36(b)(2)(E).

520. *Id.* at 36(b)(2)(A)(vii) ("[D]elay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Mich.	X 521	X 522		X 523		X 524	X 525					X 526	X 527		X 528
Minn.															X 529
Miss.				X 530											

521. MICH. CT. R. 6.004(C)(1)–(2).

522. *Id.* at 6.004(C)(1).

523. *Id.* at 6.004(C)(3)–(4).

524. *Id.* at 6.004(C)(1).

525. *Id.*

526. *Id.* at 6.004(C)(5) ("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, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable").

527. *Id.* at 6.004(C)(1).

528. *Id.* at 6.004(C)(6) ("[A]ny other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.").

529. Minnesota's Rules of Criminal Procedure permit extensions of the time limit for good cause, but does not give any other direction on excludable timeframes. *See* MINN. R. CRIM. P. 6.06, 11.09.

530. Mississippi's statute permits extensions of the time limit if "good cause be shown, and a continuance duly granted by the court," but does not give any other direction on excludable timeframes. *See* MISS. CODE ANN. § 99-17-1 (1976).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Mont.															X 531
Neb.	X 532		X 533	X 534	X 535	X 536	X 537					X 538	X 539		X 540

531. MONT. CODE ANN. § 46-1-506 (2007) ("Time spent in mediation may not be counted in determining whether a defendant's right to a speedy trial has been violated.").

532. NEB. REV. STAT. § 29-1207(4)(a) (2010).

533. *Id.* § 29-1207(3).

534. *Id.* § 29-1207(4)(b)–(c).

535. *Id.* § 29-1207(4)(a) ("[T]he time from filing until final disposition of pretrial motions of the defendant, including . . . motions for a change of venue[.]").

536. *Id.*

537. *Id.*

538. *Id.* § 29-1207(4)(e).

539. *Id.* § 29-1207(4)(a).

540. *Id.* § 29-1207(4)(f) ("Other periods of delay not specifically enumerated in this section, but only if the court finds that they are for good cause.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Nev.				X [541]										X [542]	X [543]

541. NEV. REV. STAT. § 174.511 (1983) ("The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment. The court may postpone the trial if . . . [i]t finds that more time is needed by the defendant to prepare a defense.").

542. *Id.* ("The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment. The court may postpone the trial if . . . [t]he number of other cases pending in the court prohibits the acceptance of the case for trial within that time.").

543. *Id.* § 178.556 (including an exception if the trial was "postponed upon the defendant's application").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
N.J.	X [544]		X [545]	X [546]			X [547]	X [548]		X [549]		X [550]			X [551]

544. N.J. STAT. ANN. § 2A:162-22a(1)(a) (West 2017); N.J. CT. R. 3:25-4(i)(1).

545. N.J. STAT. ANN. § 2A:162-22b(2)(b)(iv) (West 2017); N.J. CT. R. 3:25-4(g).

546. N.J. STAT. ANN. § 2A:162-22b(1)(d), (g) (West 2017); N.J. CT. R. 3:25-4(i)(4), (7).

547. N.J. STAT. ANN. § 2A:162-22b(1)(c) (West 2017) ("The time from the filing to the final disposition of a motion made before trial by the prosecutor or the eligible defendant."); N.J. CT. R. 3:25-4(i)(3).

548. N.J. STAT. ANN. § 2A:162-22b(1)(e) (West 2017) ("The time resulting from the detention of an eligible defendant in another jurisdiction provided the prosecutor has been diligent and has made reasonable efforts to obtain the eligible defendant's presence."); N.J. CT. R. 3:25-4(i)(5).

549. N.J. STAT. ANN. § 2A:162-22b(1)(f) (West 2017) ("The time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of an eligible defendant, material witness or other evidence, when there is a reasonable expectation that the eligible defendant, witness or evidence will become available in the near future."); N.J. CT. R. 3:25-4(i)(6).

550. N.J. STAT. ANN. § 2A:162-22b(1)(h) (West 2017) ("The time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period for trial set forth in this section[.]"); N.J. CT. R. 3:25-4(i)(8).

551. N.J. STAT. ANN. § 2A:162-22b(1)(b) (West 2017) ("The time from the filing to the disposition of an eligible defendant's application for supervisory treatment . . . , special probation . . . , drug or alcohol treatment as a condition of probation . . . , or other pretrial treatment or supervisory program[.]"); *id.* § 2A:162-22b(1)(j) ("The time resulting from a disqualification or recusal of a judge[.]"); *id.* § 2A:162-22b(1)(k) ("The time resulting from a failure by the eligible defendant to provide timely and complete discovery".); *id.* § 2A:162-22b(1)(l) ("The time for other periods of delay not specifically enumerated if the court finds good cause for the delay[.]").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
N.M.															X [552]

552. N.M. R. CRIM. P. METRO. CT. 7-506(C)(1) ("[O]n the filing of a written waiver of the provisions of this rule by the defendant and approval of the court[.]"); *id.* at 7-506(C)(2) ("[O]n motion of the defendant, for good cause shown, and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days[.]"); *id.* at 7-506(C)(3) ("[O]n stipulation of the parties and approval of the court, for a period not exceeding sixty (60) days, but the aggregate of all extensions granted under this subparagraph shall not exceed sixty (60) days[.]"); *id.* at 7-506(C)(4) ("[O]n withdrawal of a plea or rejection of a plea for a period up to sixty (60) days"); *id.* at 7-506(C)(5) ("[O]n a determination by the court that exceptional circumstances exist that were beyond the control of the state or the court that prevented the case from being heard within the time period and a finding, either on the record or in writing, that the defendant would not be unfairly prejudiced, the court may grant further extensions that are necessary in the interests of justice"). New Mexico would have more excludable time periods, but instead they use the dates of the event that caused additional delay as the triggering date. *See supra* note 240.

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
N.Y.	X 553	X 554		X 555		X 556	X 557	X 558				X 559	X 560		X 561

553. N.Y. CRIM. PROC. LAW § 30.30(4)(a) (McKinney 2020).

554. *Id.*

555. *Id.* § 30.30(4)(b), (g).

556. *Id.* § 30.30(4)(a).

557. *Id.*

558. *Id.* § 30.30(4)(a), (e) ("[T]he period of delay resulting from detention of the defendant in another jurisdiction provided the district attorney is aware of such detention and has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.").

559. *Id.* § 30.30(4)(d).

560. *Id.* § 30.30(4)(a).

561. *Id.* § 30.30(4)(f) ("[T]he period during which the defendant is without counsel through no fault of the court; except when the defendant is proceeding as his own attorney with the permission of the court."); *id.* § 30.30(4)(g) ("other periods of delay occasioned by exceptional circumstances"); *id.* § 30.30(4)(h) ("[T]he period during which an action has been adjourned in contemplation of dismissal.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Ohio	X 562	X 563		X 564	X 565		X 566	X 567					X 568		X 569

562. OHIO REV. CODE ANN. § 2945.72(B) (LexisNexsis 2022).

563. *Id.* § 2945.72(I)–(J).

564. *Id.* § 2945.72(H) ("The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion.").

565. *Id.* § 2945.72(F).

566. *Id.* § 2945.72(E).

567. *Id.* § 2945.72(A) ("[B]y reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure availability of the accused.").

568. *Id.*

569. *Id.* § 2945.72(C) ("Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon the accused's request as required by law".); *id.* § 2945.72(D) ("Any period of delay occasioned by the neglect or improper act of the accused.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Okla.	X 570		X 571							X 572		X 573		X 574	X 575

570. OKLA. STAT. tit. 22, § 812.2(A)(2)(c)–(d) (1999).

571. *Id.* § 812.1(C).

572. *Id.* § 812.2(A)(2)(e) ("[T]here is material evidence or a material witness which is unavailable and that reasonable efforts have been made to procure such evidence or witness, and there are reasonable grounds to believe that such evidence or witness can be obtained and trial commenced within a reasonable time[.]").

573. *Id.* § 812.2(A)(2)(f) ("[T]he accused is charged as a codefendant or coconspirator and the court has determined that the codefendants or coconspirators must be tried before separate juries taken from separate jury panels[.]").

574. *Id.* § 812.2(A)(2)(g) ("[T]he court has other cases pending for trial that are for persons incarcerated prior to the case in question, and the court does not have sufficient time to commence the trial of the case within the time limitation fixed for trial[.]").

575. *Id.* § 812.2(A)(2)(a)–(b) (the delay is because of the accused or their attorney); *id.* § 812.2(A)(2)(h) ("[T]he court, state, accused, or the attorney for the accused is incapable of proceeding to trial due to illness or other reason and it is unreasonable to reassign the case[.]"); *id.* § 812.2(A)(2)(i) ("[D]ue to other reasonable grounds the court does not have sufficient time to commence the trial of the case within the time limit fixed for trial.").

Jurisdiction	Or.	Pa.
Competency Concerns[410]	X[576]	
Interlocutory Appeal	X[577]	
Mistrial	X[578]	
Continuance	X[579]	
Change of Venue		
Other Cases Against the Accused	X[580]	
Pretrial Motions		
Delay in Transporting the Accused	X[581]	
Consideration of the Court of a Proposed Plea Agreement		
Absence or Unavailability of an Essential Witness		
Time Between Dismissal and Recharging		
Codefendant		
Other Proceedings Concerning the Accused		
Calendar Congestion		
Other[411]		X[582]

576. OR. REV. STAT. § 135.748(1)(a) (2017).

577. *Id.* § 135.748(1)(b).

578. *Id.* § 135.748(1)(g) ("A period of time between a mistrial on the charging instrument and a subsequent trial on the charging instrument, not to exceed three months for each mistrial. The three-month limit may be extended by the court for good cause upon request from either party or upon the court's own motion.").

579. *Id.* § 135.748(1)(h).

580. *Id.* § 135.748(1)(f).

581. *Id.* § 135.748(1)(d) ("A period of time during which the defendant's location is known but the defendant's presence for trial cannot be obtained, or during which the defendant is outside this state and resists being returned to this state for trial.").

582. In Pennsylvania, the only time periods that are counted when determining a speedy trial violation are "periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence." PA. R. CRIM. P. 600(C)(1).

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
S.D.	X 583		X 584	X 585	X 586	X 587	X 588					X 589	X 590		X 591
Va.	X 592		X 593	X 594						X 595		X 596			X 597

583. S.D. CODIFIED LAWS § 23A-44-5.1(4)(a) (2021).

584. *Id.* § 23A-44-5.1(3).

585. *Id.* § 23A-44-5.1(4)(b)–(c).

586. *Id.* § 23A-44-5.1(4)(a).

587. *Id.*

588. *Id.*

589. *Id.* § 23A-44-5.1(4)(e).

590. *Id.* § 23A-44-5.1(4)(a).

591. *Id.* § 23A-44-5.1(4)(f) ("The period of delay resulting from a change of judge or magistrate obtained by the defendant[.]"); *id.* § 23A-44-5.1(4)(g) ("The period of delay during the declaration of a judicial emergency by the Supreme Court . . . which shall be retroactive to the date the judicial emergency is declared[.]"); *id.* § 23A-44-5.1(4)(h) ("Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause.").

592. VA. CODE ANN. § 19.2-243(1) (2009).

593. *Id.* § 19.2-243(6) ("By the inability of the jury to agree in their verdict.").

594. *Id.* § 19.2-243(4)–(5).

595. *Id.* § 19.2-243(2) ("By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident.").

596. *Id.* § 19.2-243(3) ("By the granting of a separate trial at the request of a person indicted jointly with others for a felony.").

597. *Id.* § 19.2-243(7) ("By a natural disaster, civil disorder, or act of God.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Wash.	X 598		X 599	X 600	X 601	X 602					X 603				X 604
W. Va.	X 605		X 606	X 607						X 608					
Wis.				X 609											

598. WASH. CT. R. 3.3(e)(1).

599. *Id.* at 3.3(c)(2)(iii).

600. *Id.* at 3.3(e)(3), (f).

601. *Id.* at 3.3(c)(2)(vi).

602. *Id.* at 3.3(e)(2), (5), (7).

603. *Id.* at 3.3(e)(4).

604. *Id.* at 3.3(e)(8) ("Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties."); *id.* at 3.3(9) ("A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.").

605. W. VA. CODE §§ 62-2-12, 62-3-21 (2005).

606. *Id.* § 62-3-21 ("[T]he inability of the jury to agree in their verdict[.]").

607. *Id*. ("[A] continuance granted on the motion of the accused[.]").

608. *Id.* § 62-3-21 ("[B]y the witnesses for the State being enticed or kept away, or prevented from attending by sickness or inevitable accident[.]"); *id.* § 62-2-12.

609. WIS. STAT. § 971.10(3)(a) (1997) ("A court may grant a continuance in a case, upon its own motion or the motion of any party, if the ends of justice served by taking action outweigh the best interest of the public and the defendant in a speedy trial.").

Jurisdiction	Competency Concerns[410]	Interlocutory Appeal	Mistrial	Continuance	Change of Venue	Other Cases Against the Accused	Pretrial Motions	Delay in Transporting the Accused	Consideration of the Court of a Proposed Plea Agreement	Absence or Unavailability of an Essential Witness	Time Between Dismissal and Recharging	Codefendant	Other Proceedings Concerning the Accused	Calendar Congestion	Other[411]
Wyo.	X 610			X 611		X 612					X 613				X 614

610. WYO. R. PRAC. & P. 48(b)(3)(A).
611. *Id.* at 48(b)(4).
612. *Id.* at 48(b)(3)(B).
613. *Id.* at 48(b)(3)(C).
614. *Id.* at 48(b)(3)(D) ("Delay occasioned by defendant's change of counsel or application therefor.").

APPENDIX D

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
My Proposed Statute/ Rule					X
Federal					X – 18 U.S.C. § 3161(c)(1) (2018)
Ala.	X – ALA. CODE § 15-25-6 (2022); ALA. R. CRIM. P. 8.1–8.3				
Alaska					X – ALASKA R. CRIM. P. 45(b)
Ariz.		X – ARIZ. R. CRIM. P. 8.2[615]			

615. Arizona has a timeframe of 150 days if the accused person is in custody, 180 days if the accused person is out of custody, 270 days for complex cases, and twenty-four months for capital cases. *See* ARIZ. R. CRIM. P. 8.2(a).

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
Ark.			X – ARK. R. CRIM. P. 28.1–28.3		
Cal.					X – CAL. PENAL CODE § 1382 (West 2009)
Colo.				X – COLO. REV. STAT. § 18-1-405(1) (2021); COLO. R. CRIM. P. 48	
Conn.			X – CONN. GEN. STAT. § 54-82m (2007)		
Del.	X				
Fla.					X – FLA. R. CRIM. P. 3.191
Ga.		X – GA. CODE ANN. §§ 17-7-170 to -171 (2011) [616]			

616. *See supra* note 158.

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
Haw.				X – HAW. R. PEN. P. 48	
Idaho				X –IDAHO CODE § 19-3501 (2004)	
Ill.					X – 725 ILL. COMP. STAT. 5/103-5 (2023)
Ind.			X – IND. R. CRIM. P. 4[617]		
Iowa			X – IOWA R. CRIM. P. 2.33(2)(c)		
Kan.		X – KAN. STAT. ANN. § 22-3402 (2023) [618]			
Ky.	X – KY. R. CRIM. P. 9.02[619]				
La.					X – LA. CODE CRIM.

617. Indiana has a timeframe of six months if the accused person is in custody and one year for anyone accused (regardless of custody status). *See* IND. R. CRIM. P 4(A), (C). Indiana is in this column because many cases would fall in the one-year timeframe.

618. *See supra* note 158.

619. The Kentucky statute does include a timeframe, but it applies to such few cases that I have included Kentucky in this column. *See* KY. REV. STAT ANN. § 421.510 (West 2020). The Kentucky statute only applies in cases where the prosecution filed a speedy trial motion, the court grants the motion, the victim is less than sixteen years old, and the crime is a sexual offense. *See id.*

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
					PROC. ANN. art. 701 (2021)[620]
Me.	X				
Md.				X – MD. CODE ANN., CRIM. PROC. § 6-103 (2023)	
Mass.			X – MASS. R. CRIM. P. 36(b)		
Mich.		X – MICH. CT. R. 6.004[621]			
Minn.					X – MINN. R. CRIM. P. 6.06, 11.09
Miss.			X – MISS. CODE ANN. § 99-17-1 (1976)		
Mo.	X – MO. REV. STAT. § 545.780 (1986)				
Mont.		X – MONT.			

620. The Louisiana statute has one category of cases where the timeframe is 180 days (felony offenses when the accused is out of custody), but most of the categories are less than 180 days which is why Louisiana is in this column. *See* LA. CODE CRIM. PROC. ANN. art. 701 (2021).

621. Timeframe is twenty-eight days for a misdemeanor and 180 days for a felony, but the timeframe only applies to people accused in custody. *See* MICH. CT. R. 6.004(C). There is no timeframe in the Michigan statute or rule of criminal procedure for people accused who are out of custody. *See* MICH. COMP. LAWS §§ 767.38; 768.1 (2024); MICH. CT. R. 6.004.

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
		CODE ANN. § 46-13-401 (1989)[622]			
Neb.				X – NEB. REV. STAT. § 29-1207 (2010)	
Nev.					X – NEV. REV. STAT. §§ 174.511 (1983), 178.556 (1991)
N.H.	X – N.H. REV. STAT. ANN. § 632-A:9 (2003)				
N.J.			X – N.J. STAT. ANN. § 2A:162-22 (West 2017)[623]		
N.M.			X – N.M. R. CRIM. P. METRO. CT. 7-506		
N.Y.					X – N.Y. CRIM. PROC.

622. Montana has a timeframe of 6 months from the entry of a not guilty plea in misdemeanor cases, but no timeline for felony cases. *See supra* note 150.

623. Although New Jersey's statute has a 180-day timeframe after indictment, in practice the timeframe is much longer. *See* N.J. STAT. ANN. § 2A:162-22 (West 2017). Therefore, New Jersey is included in this column.

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
					LAW § 30.30 (McKinney 2020)[624]
N.C.	X – N.C. GEN. STAT. § 15-10 (1913)				
N.D.	X – N.D. CENT. CODE § 29-01-06 (2009); N.D. R. CRIM. P. 48				
Ohio		X – OHIO REV. CODE ANN. §§ 2945.71, 2945.72, 2945.73 (Lex-isNexis 2022)[625]			
Okla.			X – OKLA. STAT. tit. 22, § 812.1 (2022)		
Or.			X – OR. REV. STAT.		

624. The New York Statute has one category of cases where the timeframe is six months (felony offenses when the accused is out of custody), but most of the categories are less than six months which is why New York is in this column. *See* N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2020).

625. Ohio has multiple timeframes ranging from ten days for a person in custody accused of a minor misdemeanor to 270 days for a person out of custody accused of a felony. *See See* OHIO REV. CODE ANN. §§ 2945.71, 2945.72, 2945.73 (LexisNexis 2022).

Jurisdiction	**No Timeframe**	**Other**	**Timeframe > 180 Days (Six Months)**	**Timeframe of 180 Days (Six Months)**	**Timeframe < 180 Days (Six Months)**
			§ 135.746 (2014)		
Pa.			X – PA. R. CRIM. P. 600		
R.I.	X – 11 R.I. GEN. LAWS § 1-37-11.2 (1988)				
S.C.	X				
S.D.				X – S.D. CODIFIED LAWS § 23A-44-5.1 (2021)	
Tenn.	X – TENN. CODE. ANN. § 40-18-103 (2022)[626]				
Tex.	X – TEX. CODE CRIM. PROC. ANN. art. 1, § 1.05, art. 28, § 28.061 (West 1997)				
Utah	X – UTAH CODE ANN. § 77-1-6(1)(f) (West 1980)				

626. Tennessee is in this category because the statute includes a timeline only for Class X felonies, which are no longer a classification in Tennessee. *See* TENN. CODE ANN. §§ 39-1-701 to -704, *repealed by* 1989 Tenn. Pub. Acts, ch. 591, § 1; *see also* TENN. CODE ANN. § 40-18-103 (1981).

Jurisdiction	No Timeframe	Other	Timeframe > 180 Days (Six Months)	Timeframe of 180 Days (Six Months)	Timeframe < 180 Days (Six Months)
Vt.	X – VT. STAT. ANN. tit. 13, § 7553b (1993)[627]				
Va.					X – VA. CODE ANN. § 19.2-243 (2009)
Wash.					X – WA. SUPER. CT. R. 3.3
W. Va.		X – W. VA. CODE §§ 62-3-21, 62-3-1 (1981) [628]			
Wis.					X – WIS. STAT. § 971.10 (1997)
Wyo.				X – WYO. R. PRAC. & P. 48(b)(2)	

627. Vermont is included in this column because although there is a timeline in the statute, it applies to such few cases. *See* VT. STAT. ANN. tit. 13, § 7553b (1993). The Vermont statute's timeline only applies in cases where the accused person is held in custody without bail for an offense punishable by less than death or life imprisonment. *See id.*

628. The West Virginia statute timeframes range from four months to one year. *See* W. VA. CODE § 62-3-21 (1959).

APPENDIX E

Jurisdiction	**No Remedy**	**Release From Custody**	**Dismissal Without Prejudice**	**Prejudice Determined by Court**	**Other**	**Dismissal With Prejudice**
My Proposed Statute/ Rule from Part IV						X
Federal				X – 18 U.S.C. § 3162 (2018)		
Ala.	X – ALA. CODE § 15-25-6 (2022); ALA. R. CRIM. P. 8.1–8.3					
Alaska						X – ALASKA R. CRIM. P. 45(g)
Ariz.			X – ARIZ. R. CRIM. P. 13.2	X – ARIZ. R. CRIM. P. 8.6		

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Ark.						X – ARK. R. CRIM. P. 28.1–28.3, 30.1[629]
Cal.						X – CAL. PENAL CODE § 1387 (West 2023) (after refiling)[630]
Colo.						X – COLO. REV. STAT. § 18-1-405 (2021); COLO. R. CRIM. P. 48[631]
Conn.						X – CONN. PRAC. BOOK § 43-41

629. Arkansas, Colorado, Michigan, Pennsylvania, and West Virginia allow for an earlier remedy of release from custody. *See supra* notes 174–177, 272–275, 290–293, 295–297, 300–303 and accompanying text. However, the ultimate remedy is dismissal with prejudice which is why those states are in this column.

630. *See supra* note 202.

631. Arkansas, Colorado, Michigan, Pennsylvania, and West Virginia allow for an earlier remedy of release from custody. *See supra* notes 174–177, 272–275, 290–293, 295–297, 300–303 and accompanying text. However, the ultimate remedy is dismissal with prejudice which is why those states are in this column.

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Del.	X					
Fla.						X – FLA. R. CRIM. P. 3.191(h)
Ga.						X – GA. CODE ANN. § 17-7-170 to -171 (2011)
Haw.				X – HAW. R. PEN. P. 48		
Idaho					X – dismissal with prejudice for misd. level offenses, but dismissal without prejudice for felony level offenses – IDAHO CODE § 19-3506 (2004)	

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Ill.		X – 725 ILL. COMP. STAT. 5/103-5(d) (2023)				
Ind.			X – IND. CODE 35-34-1-4(f) (1983); IND. R. CRIM. P. 4(D)[632]			
Iowa					X – dismissal with prejudice for cases with simple or serious misd., but without prejudice for cases with aggravated misd. or felonies – IOWA R. CRIM. P. 2.33(1)	

632. Indiana has an earlier remedy of release from custody. *See supra* notes 294–295 and accompanying text. However, the ultimate remedy is dismissal without prejudice which is why Indiana is in this column.

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Kan.						X – KAN. STAT. ANN. § 22-3402 (2023)
Ky.	X – KY. REV. STAT. ANN. § 421.510 (West 2020); KY R. CRIM. P. 9.02					
La.		X – LA. CODE CRIM. PROC. ANN. art. 701 (2021)				
Me.	X					
Md.	X – MD. CODE ANN., CRIM. PROC. § 6-103 (2023)					
Mass.						X – MASS. R. CRIM. P. 36(b)

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Mich.						X – MICH. CT. R. 6.004(A) [633]
Minn.		X – MINN. R. CRIM. P. 6.06; 11.09				
Miss.	X – MISS. CODE ANN. § 99-17-1 (1976)					
Mo.					X – MO. REV. STAT. § 545.780 (1986)[634]	
Mont.					X – MONT. CODE ANN. § 46-13-401 (1989)[635]	

633. Arkansas, Colorado, Michigan, Pennsylvania, and West Virginia allow for an earlier remedy of release from custody. *See supra* notes 174–177, 272–275, 290–293, 295–297, 300–303 and accompanying text. However, the ultimate remedy is dismissal with prejudice which is why those states are in this column.

634. The statute states, "Neither the failure to comply with this section nor the state's failure to prosecute shall be grounds for the dismissal of the indictment or information unless the court also finds that the defendant has been denied his constitutional right to a speedy trial." MO. REV. STAT. § 545.780(2) (1986).

635. In Montana, the remedy is dismissal with prejudice in misdemeanors, but without prejudice for felonies. *See* MONT. CODE ANN. § 46-13-401 (1989).

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Neb.						X – NEB. REV. STAT. § 29-1208 (2010)
Nev.						X – NEV. REV. STAT. § 178.556 (1991), §178.562 (2011)
N.H.	X – N.H. REV. STAT. ANN. § 632-A:9 (2003)					
N.J.		X – N.J. STAT. ANN. § 2A:162-22 (West 2017); N.J. CT. R. 3:25-4				
N.M.						X – N.M. R. CRIM. P. METRO. CT. 7-506(E)(2)

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
N.Y.						X – N.Y. CRIM. PROC. LAW § 210.20 (McKinney 1999)
N.C.		X – N.C. GEN. STAT. § 15-10 (1913)				
N.D.				X – N.D. R. CRIM. P. 48		
Ohio						X – OHIO REV. CODE ANN. § 2945.73 (LexisNexis 2022)[636]
Okla.			X –OKLA. STAT. tit. 22, § 812.2 (1999)			

636. In Ohio, the remedy is dismissal with prejudice except for situations where a felony case was dismissed because the preliminary hearing was not held within the timeframes set by the statute. *See supra* note 204. In those situations, the case is dismissed without prejudice. *Id.*

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Or.			X – OR. REV. STAT. § 135.752 (2014)			
Pa.						X – PA. R. CRIM. P. 600[637]
R.I.	X – 11 R.I. GEN. LAWS § 1-37-11.2 (1988)					
S.C.	X					
S.D.						X – S.D. CODIFIED LAWS § 23A-44-5.1 (2021)

637. Arkansas, Colorado, Michigan, Pennsylvania, and West Virginia allow for an earlier remedy of release from custody. *See supra* notes 174–177, 272–275, 290–293, 295–297, 300–303 and accompanying text. However, the ultimate remedy is dismissal with prejudice which is why those states are in this column.

Jurisdiction	**No Remedy**	**Release From Custody**	**Dismissal Without Prejudice**	**Prejudice Determined by Court**	**Other**	**Dismissal With Prejudice**
Tenn.		X – TENN. CODE. ANN. § 40-18-103 (1981)[638]				
Tex.						X – TEX. CODE CRIM. PROC. ANN. art. § 28.061 (West 1997)
Utah					X – UTAH CODE ANN. § 77-1-7 (West 1990)[639]	
Vt.					X – only requires the court to set bail – VT. STAT. ANN. tit. 13, § 7553b (1993)	

638. In Tennessee, the only remedy is that the trial court "may discharge the defendant from custody," but "failure to comply with [statutory speedy trial rights] shall not act to require release of a defendant from custody or a dismissal or withdrawl of charges." TENN. CODE ANN. § 40-18-103(c), (e) (1981).

639. *See supra* note 207 and accompanying text.

Jurisdiction	No Remedy	Release From Custody	Dismissal Without Prejudice	Prejudice Determined by Court	Other	Dismissal With Prejudice
Va.		VA. CODE ANN. § 19.2-242 (2018)				X – VA. CODE ANN. § 19.2-243 (2009)[640]
Wash.						X – WASH. SUPER. CT. R. 3.3(h)
W. Va.						X – W. VA. CODE ANN. § 62-3-21 (2022)[641]
Wis.		X – WIS. STAT. § 971.10 (4) (1997)				

640. In Virginia, the remedy is dismissal with prejudice except for situations where a case was dismissed because the person accused was held in custody and no formal charges were brought within the timeframes authorized by statute. *See supra* note 206.

641. Arkansas, Colorado, Michigan, Pennsylvania, and West Virginia allow for an earlier remedy of release from custody. *See supra* notes 174–177, 272–275, 290–293, 295–297, 300–303 and accompanying text. However, the ultimate remedy is dismissal with prejudice which is why those states are in this column.

Jurisdiction	**No Remedy**	**Release From Custody**	**Dismissal Without Prejudice**	**Prejudice Determined by Court**	**Other**	**Dismissal With Prejudice**
Wyo.			X – WYO. STAT. ANN. § 7-11-203 (1987); WYO. R. PRAC. & P. 48[642]			

642. The Wyoming Rule of Criminal Procedure does allow dismissal with prejudice, but only in circumstances where "the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay." WYO. R. PRAC. & P. 48. Otherwise the dismissal is without prejudice. *Id.*

APPENDIX F

Proposed COVID provision:[643]

(1) Continuance Due to COVID-19 Pandemic Backlog. For cases still pending that were charged after March 2020 through the adoption of this Statute/Rule,[644] upon a motion by the court *sua sponte*, the court may grant only one continuance pursuant to this subsection.

(a) The continuance is not to exceed ninety (90) days if the defendant is out on bail for the case pending a jury trial or not to exceed sixty (60) days if the defendant is in custody for the case pending a jury trial.

(b) The backlog of jury trials resulting from the COVID-19 pandemic does not include any consistent and ongoing jury trial backlog that existed prior to March 1, 2020.

(c) In considering whether to grant a continuance pursuant to this subsection, the court shall prioritize cases to proceed to trial that the defendant is in custody for the case pending a jury trial and does not waive speedy trial.

(d) The court may only grant the continuance if it makes the following specific findings on the record after the defendant and prosecution have had the opportunity to be heard:

(I) The case is a part of a court backlog of jury trials directly resulting from a restriction, procedure, or protocol implemented during the health emergency related to the COVID-19 pandemic, and the court has determined that a continuance is not attributable to any consistent and ongoing jury trial backlog that existed prior to March 1, 2020;

(II) No court in the county with jurisdiction to try the case is available, and the court has exhausted all reasonable means to bring the

643. Additionally, a legislature or state supreme court could use this proposed language as a model if there were to be another national emergency or pandemic.

644. The statute should be used for legislation, and the rule should be used for a rule of criminal procedure.

case to trial;

(III) The court has not previously granted a continuance pursuant to this subsection; and

(IV) Granting the continuance serves the interest of justice. When determining whether the continuance serves the interest of justice, the court shall make specific findings regarding the impact of a continuance on the defendant and prosecution.

(e) If a court grants a continuance pursuant to this subsection and the defendant is in custody for the case pending a jury trial because the defendant is unable to satisfy the monetary conditions of bond for release despite being eligible for release, the court shall reconsider the monetary conditions of bond for release.