

1 AN ACT concerning dismissal of criminal charges.

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

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 114-1 as follows:

6 (725 ILCS 5/114-1) (from Ch. 38, par. 114-1)

7 Sec. 114-1. Motion to dismiss charge.

8 (a) Upon the written motion of the defendant made prior  
9 to trial before or after a plea has been entered the court  
10 may dismiss the indictment, information or complaint upon any  
11 of the following grounds:

12 (1) The defendant has not been placed on trial in  
13 compliance with Section 103-5 of this Code.†

14 (2) The prosecution of the offense is barred by  
15 Sections 3-3 through 3-8 of the "Criminal Code of 1961"  
16 approved July 28, 1961, as heretofore and hereafter  
17 amended.†

18 (3) The defendant has received immunity from  
19 prosecution for the offense charged.†

20 (4) The indictment was returned by a Grand Jury  
21 which was improperly selected and which results in  
22 substantial injustice to the defendant.†

23 (5) The indictment was returned by a Grand Jury  
24 which acted contrary to Article 112 of this Code and  
25 which results in substantial injustice to the defendant.†

26 (6) The court in which the charge has been filed  
27 does not have jurisdiction.†

28 (7) The county is an improper place of trial.†

29 (8) The charge does not state an offense.†

30 (9) The indictment is based solely upon the  
31 testimony of an incompetent witness.†

1           (10) The defendant is misnamed in the charge and  
2 the misnomer results in substantial injustice to the  
3 defendant.

4           (11) The requirements of Section 109-3.1 have not  
5 been complied with.

6           (12) The knowing use of or the failure to correct  
7 perjury given at the grand jury that returned an  
8 indictment.

9           (13) The failure of the State's Attorney to inform  
10 the grand jury of the existence of evidence exculpatory  
11 to the accused when the existence of that evidence is  
12 known to the State.

13           (14) The failure of the State to present a  
14 defendant under arrest without unnecessary delay before  
15 the nearest and most accessible judge in the county as  
16 required by subsection (a) of Section 109-1.

17           (15) The failure of the State to either indict the  
18 defendant before a grand jury or to provide the defendant  
19 a prompt preliminary hearing to establish probable cause.

20           (b) The court shall require any motion to dismiss to be  
21 filed within a reasonable time after the defendant has been  
22 arraigned. Any motion not filed within such time or an  
23 extension thereof shall not be considered by the court and  
24 the grounds therefor, except as to subsections (a)(6) and  
25 (a)(8) of this Section, are waived.

26           (c) If the motion presents only an issue of law the  
27 court shall determine it without the necessity of further  
28 pleadings. If the motion alleges facts not of record in the  
29 case the State shall file an answer admitting or denying each  
30 of the factual allegations of the motion.

31           (d) When an issue of fact is presented by a motion to  
32 dismiss and the answer of the State the court shall conduct a  
33 hearing and determine the issues.

34           (d-5) When a defendant seeks dismissal of the charge

1 upon the ground set forth in subsection (a)(7) of this  
2 Section, the defendant shall make a prima facie showing that  
3 the county is an improper place of trial. Upon such showing,  
4 the State shall have the burden of proving, by a  
5 preponderance of the evidence, that the county is the proper  
6 place of trial.

7 (e) Dismissal of the charge upon the grounds set forth  
8 in subsections (a)(4) through (a)(11) of this Section shall  
9 not prevent the return of a new indictment or the filing of a  
10 new charge, and upon such dismissal the court may order that  
11 the defendant be held in custody or, if the defendant he had  
12 been previously released on bail, that the his bail be  
13 continued for a specified time pending the return of a new  
14 indictment or the filing of a new charge.

15 (f) If the court determines that the motion to dismiss  
16 based upon the grounds set forth in subsections (a)(6) and  
17 (a)(7) is well founded it may, instead of dismissal, order  
18 the cause transferred to a court of competent jurisdiction or  
19 to a proper place of trial.

20 (Source: P.A. 89-288, eff. 8-11-95; revised 2-23-00.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.