



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5292

Introduced 2/8/2012, by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

725 ILCS 5/114-1.5 new

Amends the Code of Criminal Procedure of 1963. Provides that the court may dismiss an indictment, information, or complaint with prejudice in furtherance of justice, even though there may be no basis for dismissal upon grounds specified in the Code. Provides that such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration, or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment, information, or complaint would constitute or result in injustice. Establishes factors that the court shall use in making its determination.

LRB097 13614 RLC 58150 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 114-1.5 as follows:

6 (725 ILCS 5/114-1.5 new)

7 Sec. 114-1.5. Motion to dismiss charge in the interest of
8 justice.

9 (a) An indictment, information, or complaint may be
10 dismissed with prejudice in furtherance of justice, even though
11 there may be no basis for dismissal upon any ground specified
12 in Section 114-1 of this Code. Such dismissal is required as a
13 matter of judicial discretion by the existence of some
14 compelling factor, consideration, or circumstance clearly
15 demonstrating that conviction or prosecution of the defendant
16 upon such indictment, information, or complaint would
17 constitute or result in injustice. In determining whether such
18 compelling factor, consideration, or circumstance exists, the
19 court must, to the extent applicable, examine and consider,
20 individually and collectively, the following:

21 (1) the seriousness and circumstances of the offense;

22 (2) the extent of harm caused by the offense;

23 (3) the evidence of guilt, whether admissible or

1 inadmissible, at trial;

2 (4) the history, character, and condition of the
3 defendant including mental health and physical issues;

4 (5) any exceptionally serious misconduct of law
5 enforcement personnel in the investigation, arrest, and
6 prosecution of the defendant;

7 (6) the purpose and effect of imposing upon the
8 defendant a sentence authorized for the offense;

9 (7) the impact of a dismissal upon the confidence of
10 the public in the criminal justice system;

11 (8) the impact of a dismissal on the safety or welfare
12 of the community;

13 (9) if the court deems it appropriate, the attitude of
14 the complainant or victim with respect to the motion;

15 (10) any other relevant fact indicating that a judgment
16 of conviction would serve no useful purpose.

17 (b) An order dismissing an indictment, information, or
18 complaint in the interest of justice may be issued by the court
19 on its own motion or after a written motion filed by the State
20 or the defendant. Such a motion shall be filed before trial
21 unless opportunity did not exist or the State or defendant was
22 not aware of the grounds for the motion. Upon issuing an order
23 dismissing the indictment, information, or complaint, the
24 court must set forth its reasons upon the record.

25 (c) If the motion presents only an issue of law the court
26 shall determine it without the necessity of further pleadings.

1 When an issue of fact is presented by a motion to dismiss, the
2 court shall conduct a hearing and determine the issues. The
3 court may admit hearsay or affidavit evidence on secondary
4 matters such as testimony to establish chain of custody,
5 possession of physical evidence, laboratory or medical
6 reports, authenticity of transcripts taken by official court
7 reporters, court and business records, and public documents.