

1 AN ACT concerning criminal procedure.

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, as
16 heretofore and hereafter amended.

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

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

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

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

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

28 (8) The charge does not state an offense.

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

31 (10) The defendant is misnamed in the charge and

1 the misnomer results in substantial injustice to the
2 defendant.

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

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

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

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

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

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

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

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

33 (d-5) When a defendant seeks dismissal of the charge
34 upon the ground set forth in subsection (a)(7) of this

1 Section, the defendant shall make a prima facie showing that
2 the county is an improper place of trial. Upon such showing,
3 the State shall have the burden of proving, by a
4 preponderance of the evidence, that the county is the proper
5 place of trial.

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

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

19 (Source: P.A. 92-16, eff. 6-28-01.)

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