## clerks@guamlegislature.org

**From:** Speaker's Office <speaker@guamlegislature.org>
**Sent:** Wednesday, September 23, 2020 2:28 PM
**To:** Clerks Office
**Cc:** Rennae Meno
**Subject:** M&C Fwd: Letter from Chief Justice F. Philip Carbullido
**Attachments:** Letter Senator T. Terlaje re Proposed Legislation 9.23.20.pdf; Judicial Council Resolution 20-026 re Proposed Legislation on the Conduct of Judicial Proceedings.pdf

| | | | | | |
|---|---|---|---|---|---|
| 09/23/20 | 1:57 PM | 09/23/20 | Letter Re: Proposed Legislation Regarding the Conduct of Judicial Proceedings.* | Supreme Court of Guam | 35GL-20-2229 |


*Sinseru yan Minagåhet,*

**Office of the Speaker • Tina Rose Muña Barnes**
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
*I Mina'trentai Singko na Liheslaturan Guåhan*

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
T: (671) 477-2520/1
speaker@guamlegislature.org



This e-mail message is intended only for the use of the individual or entity named above and may contain confidential and privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us by replying to speaker@guamlegislature.org and delete the message immediately. Thank you very much.

Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.


---------- Forwarded message ---------
From: **Petrina M. Ula** <pula@guamsupremecourt.com>
Date: Wed, Sep 23, 2020 at 1:57 PM
Subject: Letter from Chief Justice F. Philip Carbullido
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Cc: Speaker's Office <speaker@guamlegislature.org>, Honorable F. Philip Carbullido <fpcarbullido@guamsupremecourt.com>

Hafa Adai, Senator Terlaje,

Please see the attached letter with enclosure from Chief Justice F. Philip Carbullido. I respectfully request a reply to confirm receipt of the attached documents. Please also let me know if you have difficulty opening the attachments.

Warmest Regards,

Petrina "Trina" Ula

Chamber Clerk to the ***Honorable F. Philip Carbullido, Chief Justice of Guam***

Supreme Court of Guam

Guam Judicial Center

120 West O'Brien Drive, Suite 300, Hagåtña, Guam 96910-5174

t: 1(671) 475-3413

f: 1(671) 475-3140

**e: pula@guamsupremecourt.com**

**P Please consider the environment before printing this email.**

**Confidentiality Notice**: The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, or duplication of this communication is strictly prohibited. If you are not the intended recipient, please notify me immediately at **pula@guamsupremecourt.com** or by telephone at **(671)475-3413** and destroy all copies of the original message.

The Judiciary of Guam is an Equal Opportunity Employer and Provider.

Supreme Court of Guam
GUAM JUDICIAL CENTER SUITE 300
120 WEST O'BRIEN DRIVE, HAGÅTÑA, GUAM 96910-5174
Telephone: (671) 475-3162/80 • Facsimile: (671) 475-3140

HON. F. PHILIP CARBULLIDO
CHIEF JUSTICE

HANNAH G. ARROYO
CLERK OF COURT

**VIA ELECTRONIC MAIL: senatorterlajeguam@gmail.com**

September 23, 2020

The Honorable Therese M. Terlaje
*I Mina'Trentai Cinco Na Liheslaturan Guåhan*
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

**RE: Proposed Legislation Regarding the Conduct of Judicial Proceedings**

*Håfa Adai*, Senator Terlaje,

The Judiciary of Guam has spent the last few months drafting the enclosed pieces of proposed legislation which seek to amend various statutory requirements governing judicial proceedings to allow the trial courts to efficiently and expeditiously resolve its backlog of cases.

As you are aware, since March 2020, in response to the COVID-19 global pandemic, *I Maga'hågan Guåhan* has declared Guam to be in a state of public health emergency. Since then, *I Maga'håga* has issued a series of executive orders that have suspended non-essential government operations for the better part of the past six months. In parity with these executive orders and in recognition of the need to stem the spread of the virus, the Supreme Court of Guam has issued a series of administrative orders that have suspended non-essential court operations—including civil and criminal jury trials and grand jury proceedings—for all but a few weeks in the last six months.

The suspension of non-essential court operations has resulted in a staggering and unprecedented backlog of cases—a backlog which continues to grow each day and threatens the statutory right of all criminal defendants to a speedy jury trial. Moreover, the current size limitations of Judiciary facilities constrain the court's ability to safely and expeditiously recommence jury selections and jury trials in light of social distancing mandates and the legitimate health concerns of criminal defendants, attorneys, court employees, and those called to jury service. These constraints will cause further delay in the court's ability to tackle its backlog and will have lasting effects on the delivery of justice in all cases before the court.

Therefore, the Judiciary proposes the following statutory amendments which aim to strike a necessary compromise between the rights of criminal defendants to a speedy public trial and the capabilities of the judicial system to carry out this duty during and in the aftermath of the COVID-19 pandemic:

- permanently amending 7 GCA § 4401(c) to expand the powers of the magistrates to include the authority to preside over additional non-dispositive hearings, and permanently amending 8 GCA § 40.50 to authorize magistrates to modify bail conditions;

- temporarily amending 8 GCA § 85.15 to increase the use of six-member juries except in cases where the defendant is charged with a first degree or second degree felony;

- temporarily amending 8 GCA § 85.30 to reduce the number of peremptory challenges available in criminal cases; and

- permanently amending 8 GCA § 80.60 to increase the speedy trial time limits in criminal cases.

The recent surge in confirmed COVID-19 cases has put a strain on the island's healthcare system and has resulted in an alarming and tragic rise in the virus's death toll. Given the likely timeframe for a vaccine, it has become increasingly clear that we still have a long road ahead in the battle against this virus. We believe *I Liheslaturan Guåhan* recognizes the need to ensure the efficient and expeditious delivery of justice services to the people of Guam during these unprecedented and trying times.

Should you have any questions or concerns, please feel free to contact me.

*Senseramente*,

F. PHILIP CARBULLIDO
Chief Justice of Guam

CC: Hon. Tina Muña Barnes, Speaker, *I Mina'Trentai Cinco Na Liheslaturan Guåhan*

Enclosure: Judicial Council Resolution 20-026 re: Proposed Legislation on Conduce of Judicial Proceedings

**BEFORE THE 2020 JUDICIAL COUNCIL OF GUAM**

**RESOLUTION NO. JC20-026**

**RELATIVE TO APPROVING PROPOSED LEGISLATION ON THE CONDUCT OF JUDICIAL PROCEEDINGS FOR SUBMISSION TO THE GUAM LEGISLATURE**

**WHEREAS,** in response to the COVID-19 public health emergency declared by the Governor in Executive Order No. 2020-03 and the closure of all non-essential government operations in Executive Order No. 2020-04, the Supreme Court on March 16, 2020 in Administrative Orders ADM20-207 and ADM20-210 suspended, postponed and continued all but essential judicial proceedings and closed all but essential court facilities and operations; and

**WHEREAS,** because of the continuation and extension of the public health emergency by the Governor to the present time, the Supreme Court has issued additional Administrative Orders suspending all but essential judicial proceedings, including civil and criminal jury trials and grand jury proceedings, and tolling statutory time limits for filings and speedy trial time periods; and

**WHEREAS,** in July the Judiciary was able to re-open operations and judicial proceedings, on a limited basis, when the Governor in Executive Order No. 2020-24 moved Guam into Pandemic Condition of Readiness (PCOR) 3; and

**WHEREAS,** a resurgence of COVID-19 positivity rates caused the Governor to issue Executive Order No. 2020-27 on August 14, 2020, which reverted Guam to PCOR 1 effective August 16, 2020; and

**WHEREAS,** the Supreme Court on August 14, 2020 issued Administrative Order No. ADM20-392, which re-imposed the suspension of all but essential judicial proceedings and closed all but essential court facilities and operations; and

**WHEREAS,** with the uncertainty of the ability of the Judiciary to resume operations, the backlog of trials and other court proceedings continues to grow at alarming and unprecedented rates; and

**WHEREAS,** the Judicial Council has determined that certain strict statutory requirements governing judicial proceedings should be amended, primarily on a temporary basis, to allow the trial courts to efficiently and expeditiously resolve the backlog of cases when operations are resumed or else many cases face dismissal before they can be resolved on their merits; and

**WHEREAS,** the Judicial Council has determined that the following amendments will greatly assist the trial courts in resolving the backlog of cases:

- permanently amending 7 GCA § 4401(c) to expand the powers of the magistrates to include the authority to preside over additional non-dispositive hearings, and permanently amending 8 GCA § 40.50 to authorize magistrates to modify bail conditions (attached hereto as Exhibit A),

- temporarily amending 8 GCA § 85.15 to increase the use of six (6) member juries except in cases where the defendant is charged with a first degree or second degree felony (attached hereto as Exhibit B),

- temporarily amending 8 GCA § 85.30 to reduce the number of peremptory challenges available in criminal cases (attached hereto as Exhibit C), and

- permanently amending 8 GCA § 80.60 to increase the speedy trial time limits in criminal cases (attached hereto as Exhibit D).

**NOW THEREFORE BE IT RESOLVED,** that the Judicial Council hereby approves the proposed legislation in Exhibits A-D hereto, and

**BE IT FURTHER RESOLVED,** that the Chief Justice is hereby requested to transmit the proposed legislation in Exhibits A-D hereto to the Legislature for its consideration.

**DULY ADOPTED** this 20th day of August, 2020 at a duly noticed meeting of the Judicial Council of Guam.

**F. PHILIP CARBULLIDO,** Chairman

Dated: August 20, 2020

ATTEST:

**Petrina M. Ula,** Executive Secretary

Dated: August 20, 2020

**JC20-026**
**EXHIBIT A**

**PROPOSED LEGISLATION TO EXPAND THE POWERS OF THE SUPERIOR COURT OF GUAM MAGISTRATES AND TO AUTHORIZE THE SUPERIOR COURT OF GUAM MAGISTRATES TO MODIFY BAIL CONDITIONS**

**AN ACT TO *AMEND* TITLE 7 GCA § 4401(c) TO EXPAND THE POWERS OF THE SUPERIOR COURT OF GUAM MAGISTRATES TO INCLUDE THE AUTHORITY TO PRESIDE OVER ADDITIONAL NON-DISPOSITIVE HEARINGS, AND TO *AMEND* TITLE 8 GCA § 40.50 TO AUTHORIZE THE SUPERIOR COURT OF GUAM MAGISTRATES TO MODIFY BAIL CONDITIONS.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that there are certain non-dispositive hearings over which Superior Court judges currently preside which are appropriate for a magistrate to decide. The expansion of the statutory authority of the magistrates of the Superior Court of Guam will provide the courts with an efficient supplemental judicial resource to assist in expediting its workload.

Therefore, it is the intent of *I Liheslaturan Guåhan* to expand the powers of the Superior Court of Guam magistrates to allow them to perform additional duties, such as disposing of pretrial matters, issuing search warrants and warrants of arrest, performing marriages, and hearing bail redetermination motions. This additional authority will allow Superior Court judges to more efficiently and effectively preside over criminal trials and ensure the timely and fair adjudication of all matters before the Superior Court of Guam.

**Section 2.** Subsection (c) of § 4401 of Article 4, Chapter 4, Title 7, Guam Code Annotated, is hereby *amended* to read as follows:

(c) As assigned by the Chief Justice, a magistrate *shall:*

(1) preside over and render decisions and judgments in small claims cases, traffic cases, change of name petitions, and collection cases, and may grant uncontested divorces in cases where there is a notarized consent on file;

(2) enter judgment upon confession of judgment or default judgment in a civil case when a party alleges a sum certain is due;

(3) preside over post-judgment collection proceedings in civil cases and restitution judgments in criminal cases, and issue writs of execution and other orders in such proceedings;

(4) preside over first appearances of criminal defendants and arraignments in criminal cases, set or modify bail and order pre-trial release conditions or detention, take pleas, including accepting guilty pleas in misdemeanor cases, sentencing misdemeanants and entering judgments accordingly;

(5) issue summons, issue bench warrants, and hear return of warrants in all cases ~~to which assigned~~;

(6) preside over any matters which may be heard by a Referee of the Superior Court of Guam;

(7) serve as a Special Master upon appointment by the Presiding Judge;

(8) serve as Judge *Pro Temporare* upon appointment by the Chief Justice;

(9) serve as a settlement judge in a civil or domestic case upon appointment by the Presiding Judge;

(10) conduct criminal trial setting hearings;

(11) preside over preliminary hearings in criminal cases, and render decisions and judgments over procedural and discovery motions in criminal matters;

(12) preside over initial scheduling conferences in civil matters, to include, but *not* limited to: initial pretrial conferences, case scheduling, discovery disputes, motions, and settlement efforts; ~~and~~

(13) preside over unlawful detainer proceedings.~~;~~

(14) hear and determine any pretrial matter, other than case dispositive motions, and preside over status hearings in all matters;

(15) issue search warrants and issue arrest warrants in all cases;

(16) take grand jury returns; and

(17) perform marriages.

**Section 3.** Subsection (a) of § 40.50 of Title 8, Guam Code Annotated, is hereby *amended* to read as follows:

(a) A person for whom conditions of release are imposed pursuant to this Chapter, and who after twenty-four (24) hours from the time of release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the Court. ~~If the case has not yet been assigned to a particular Court,~~ ~~t~~The conditions are to be reviewed by the judge or magistrate who imposed them, or by another ~~judge~~~~the assigned ex parte judge if the judge who imposed the conditions is not available. If the case has been assigned to a particular Court, the conditions are to be reviewed by the assigned judge~~. Unless the conditions of release are amended and the person is thereupon released, the judge or magistrate shall set forth in writing the reasons for requiring the conditions imposed.

**Section 4. Effective Date.** This Act *shall* become effective upon enactment.

**JC20-026**
**EXHIBIT B**

**PROPOSED LEGISLATION TO AMEND TITLE 8 GCA § 85.15 TO INCREASE THE USE OF SIX (6) MEMBER JURIES EXCEPT IN CASES WHERE THE DEFENDANT IS CHARGED WITH A FIRST DEGREE OR SECOND DEGREE FELONY**

**AN ACT TO *AMEND* TITLE 8 GCA § 85.15 TO INCREASE THE USE OF SIX (6) MEMBER JURIES EXCEPT IN CASES WHERE THE DEFENDANT IS CHARGED WITH A FIRST DEGREE OR SECOND DEGREE FELONY**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the COVID-19 pandemic and the subsequent closure of the Superior Court of Guam has caused a significant interruption to Guam's legal system. The ensuing backlog of criminal cases threatens the statutory right of all criminal defendants to a speedy jury trial. Moreover, the current size limitations of Judiciary of Guam facilities constrain the court's ability to safely recommence twelve-person jury trials in light of social distancing mandates necessitated by the COVID-19 pandemic and the legitimate health concerns of criminal defendants, attorneys, court employees, and those called to jury service. These constraints will cause further delay in the court's ability to tackle its backlog and will have lasting effects on the delivery of justice in all cases before the court.

Therefore, it is the intent of *I Liheslaturan Guåhan* to strike a necessary compromise between the rights of criminal defendants to a speedy public trial and the capabilities of the courthouse to carry out this duty. *I Liheslaturan Guåhan* finds that expanding—for a limited period—the use of six-person juries to all but the most serious felony charges will accomplish this goal without violating a defendant's constitutional due process rights. Thus, while a defendant faced with a First Degree or Second Degree Felony charge shall remain entitled to a twelve-person jury upon the defendant's request, all other felony cases will be tried by a jury of six. Smaller juries for lower-stakes felony cases will permit expedient jury selection, and thus a more expeditious resolution in criminal cases while also reducing the number of potential jurors who must report for jury service.

**Section 2.** Section 85.15 of Title 8, Guam Code Annotated, is hereby *amended* to read as follows:

**§ 85.15. Six (6) Member Juries; When Twelve (12) May Be Requested.**

Juries shall be of six. However, in a prosecution which includes a First Degree or Second Degree Felony charge~~by indictment or information~~, the defendant shall be entitled to a jury of twelve upon his written request filed with the court prior to the date of trial. In any case where a jury of twelve is demanded, at any time before verdict the parties may stipulate in writing with

the approval of the court that the jury shall consist of any number less than twelve but not less than six. In the event that a defendant who was previously entitled to demand a jury of twelve as set forth herein ultimately proceeds to trial for an offense which would have originally proceeded with a jury of six—including, but not limited to, when all First Degree and Second Degree Felony charges are dismissed and prosecution proceeds on the lesser charges—the defendant shall be entitled to a jury of six.

**Section 3. Sunset Provision.** The amendments to 8 GCA § 85.15 as provided in Section 2 of this Act *shall* be deemed repealed two (2) years after the enactment of this Act *unless* new legislation is duly enacted authorizing its continuation.

**Section 4. Effective Date.** This Act *shall* become effective upon enactment.

**JC20-026**
**EXHIBIT C**

**PROPOSED LEGISLATION TO AMEND TITLE 8 GCA § 85.30 TO REDUCE THE NUMBER OF PEREMPTORY CHALLENGES AVAILABLE IN CRIMINAL CASES**

**AN ACT TO *AMEND* TITLE 8 GCA § 85.30 TO REDUCE THE NUMBER OF PEREMPTORY CHALLENGES AVAILABLE IN CRIMINAL CASES.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the COVID-19 pandemic and the subsequent closure of the Superior Court of Guam has caused a significant interruption to Guam's legal system. The ensuing backlog of criminal cases threatens the statutory right of all criminal defendants to demand a speedy jury trial. Moreover, the current size limitations of Judiciary of Guam facilities constrain the court's ability to safely recommence jury selection proceedings in light of social distancing mandates necessitated by the COVID-19 pandemic and the legitimate health concerns of criminal defendants, attorneys, court employees, and those called to jury service. These constraints will cause further delay in the court's ability to tackle its backlog and will have lasting effects on the delivery of justice in all cases before the court.

*I Liheslaturan Guåhan* finds that the large number of peremptory challenges available to both sides in criminal cases greatly lengthens the jury selection process. Reducing the number of peremptory challenges would produce significant savings in the administration of the jury system, including reducing the number of jurors summoned for jury selection. Additionally, the social distancing measures necessitated by the COVID-19 pandemic will cause significantly greater delays in the jury selection process and warrant a reduction in the number of persons summoned for jury selection.

Therefore, it is the intent of *I Liheslaturan Guåhan* to strike a necessary compromise between the rights of criminal defendants to a fair and speedy trial and the capabilities of the court to carry out its mandates. *I Liheslaturan Guåhan* finds that this can be accomplished by reducing—for a limited period—the number of peremptory challenges available to criminal defendants and to prosecutors under current Guam law. Fewer peremptory challenges will permit a quicker process in selecting a jury while also reducing the number of potential jurors who must report for jury service.

**Section 2.** Section 85.30 of Title 8, Guam Code Annotated, is hereby *amended* to read as follows:

**§ 85.30. Peremptory Challenges; Number Available.**

~~In a prosecution by indictment or information if the offense charged is punishable by a life sentence, each side is entitled to twenty peremptory challenges, otherwise the government is entitled to six peremptory challenges and the defendant or defendants jointly to ten peremptory~~

~~challenges. In a prosecution by complaint, each side is entitled to three peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.~~In any felony prosecution where the offense charged may be punishable by a sentence of fifteen or more years of incarceration, each side is entitled to twelve peremptory challenges. In any felony prosecution where the offense charged may be punishable by a sentence of *less* than fifteen years of incarceration, the defense is entitled to six peremptory challenges and the prosecution is entitled to three peremptory challenges. In any misdemeanor or petty misdemeanor prosecution, the defense is entitled to two peremptory challenges and the prosecution is entitled to one peremptory challenge. In any criminal prosecution where there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately.

**Section 3. Sunset Provision.** The amendments to 8 GCA § 85.30 as provided in Section 2 of this Act *shall* be deemed repealed two (2) years after the enactment of this Act *unless* new legislation is duly enacted authorizing its continuation.

**Section 4. Effective Date.** This Act *shall* become effective upon enactment.

**JC20-026**
**EXHIBIT D**

**AN ACT TO AMEND TITLE 8 GCA § 80.60 BY EXTENDING THE TIME IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL.**

**AN ACT TO *AMEND* TITLE 8 GCA § 80.60 BY EXTENDING THE TIME IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that criminal defendants have a right to a speedy trial under the Sixth Amendment to the United States Constitution, extended to Guam by the Organic Act of Guam. This right has been effectuated by 8 GCA § 80.60 and its predecessors, setting forth the criteria for when a case may or may not be dismissed for reasons of time. *I Liheslaturan Guåhan* finds that in addition to protecting the rights of criminal defendants, the speedy trial statute furthers the interests of the public and of victims of crimes in the fair, accurate, and timely resolution of criminal cases.

*I Liheslaturan Guåhan* finds that while the right to a speedy trial is of significant importance, the right is not absolute. Further, there is no set standard for speedy trial limits throughout the United States, with each state adopting its own time limits. Guam's current time limits of 45 days for in-custody defendants and 60 days for not-in-custody defendants is among the shorter time limits in the nation. Criminal defendants in Guam often must choose between waiving their right to a speedy trial because they do not yet feel ready to proceed to trial or asserting their right to a speedy trial and risk not being prepared to defend themselves. Many defendants assert, waive, and re-assert their speedy trial rights multiple times throughout a case because they are not prepared to proceed to trial as the speedy trial limit draws near. This leads to an ineffective use of judicial resources as cases are constantly rescheduled based on their priority among other asserted speedy trial cases. A longer speedy trial time period will ensure that defendants are not rushed to trial without adequate opportunity to prepare and will result in a more effective utilization of resources.

*I Liheslaturan Guåhan* finds that the time limits in the American Bar Association (ABA) Standards on Speedy Trial and Timely Resolution of Criminal Cases (3d ed. 2006) provide for a much more realistic time period to bring criminal defendants to trial as compared to the 45- and 60-day time limits currently set forth in 8 GCA § 80.60. Under the ABA standards, the presumptive speedy trial time limit for in-custody defendants is 90 days from the date of arraignment, and 180 days for defendants who are not in custody. Shorter presumptive time limits are recommended for persons charged with minor offenses.

Therefore, it is the intent of *I Liheslaturan Guåhan* to increase the speedy trial time limits for in-custody misdemeanor defendants to 60 days and for not-in-custody misdemeanor defendants to 75 days. Further, it is the intent of *I Liheslaturan Guåhan* to increase the speedy trial limits for in-custody felony defendants to 90 days and for not-in-custody felony defendants to 180 days.

**Section 2.** Section 80.60 of Title 8, Guam Code Annotated is hereby *amended* to read as follows:

**§ 80.60. When a Case to be Dismissed, or Not Dismissed for Reasons of Time.**

(a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:

(1) An information is not filed or an indictment returned within the time prescribed by §§ 45.45, 45.50 and 45.80;

(2) The trial of a defendant, who is charged with a misdemeanor and is in custody at the time of his arraignment, has not commenced within ~~forty-five (45)~~sixty (60) days after his arraignment;~~, or~~

(3) The trial of a defendant, who is charged with a misdemeanor and is not in custody at the time of his arraignment, has not commenced within ~~sixty (60)~~seventy-five (75) days after his arraignment.~~;~~

(4) The trial of a defendant, who is charged with a felony and is in custody at the time of his arraignment, has not commenced within ninety (90) days after his arraignment; or

(5) The trial of a defendant, who is charged with a felony and is not in custody at the time of his arraignment, has not commenced within one hundred eighty (180) days after his arraignment.

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if:

(1) The action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, express or implied, and he is brought to trial on the date so set or within ten (10) days thereafter;

(2) The defendant failed to appear for trial and he is brought to trial within thirty (30) days following his next appearance in the trial court; or

(3) Good cause is shown for the failure to commence the trial within the prescribed period.

**Section 3. Effective Date.** This Act *shall* become effective upon enactment.