
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 453 **Hearing Date:** April 11, 2023
Author: Seyarto
Version: February 13, 2023
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: speedy trial*

HISTORY

Source: Riverside County District Attorney's Office

Prior Legislation: AB 250 (Miller), Ch. 424, Stats. 2009
SB 330 (Cedillo), Ch. 36, Stats. 2005

Support: California District Attorneys Association

Opposition: Alameda County Public Defender's Office; Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Children's Defense Fund - CA; Communities United for Restorative Youth Justice; Drug Policy Alliance; Ella Baker Center for Human Rights; Haywood Burns Institute; HomeRise San Francisco; Initiate Justice; Legal Services for Prisoner with Children; San Francisco Public Defender; Santa Cruz Barrios Unidos Inc; Young Women's Freedom Center

PURPOSE

The purpose of this bill is to provide that good cause to extend a preliminary hearing or trial beyond the statutory timelines has been met when a prosecutor or defense counsel is ill, when a witness is unavailable, when a party or witness is subject to a quarantine, and when there are insufficient courtrooms, staff or judges to handle the volume of cases, as specified.

Existing law, under the U.S. Constitution, provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. (U.S. Const., amend VI.)

Existing law, under the California Constitution, guarantees a defendant in a criminal case the right to a speedy public trial. (Cal. Const. Art. I, sec. 15.)

Existing law states that the court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

- When a person has been held to answer for a public offense and an information is not filed against the person within 15 days;

- In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment or an indictment or information, or reinstatement of criminal proceedings after a declaration of doubt of defendant's mental competency, or if a case is to be retried following a mistrial or an order granting a new trial, as specified;
- When a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after being arraigned or enters their plea, whichever occurs later, if the defendant is in custody, or within 45 days if the defendant is out of custody. (Pen. Code, § 1382, subd. (a)(1)-(3).)

Existing law states that a felony case shall not be dismissed if the defendant enters a general waiver of the 60-day trial requirement or if the defendant requests or consents to the setting of trial beyond the 60-day period. (Pen. Code, § 1382, subd. (a)(2)(A)-(B).)

Existing law states that a misdemeanor or infraction shall not be dismissed if the defendant enters a general time waiver of the 30-day or 45-day trial requirement, the defendant requests or consents to the setting of the trial beyond the 30-day or 45-day period, or the defendant fails to appear at a hearing prior to trial and a bench warrant has been issued, then the defendant will be deemed to have been arraigned on the date of their subsequent arraignment on their bench warrant. (Pen. Code, § 1382, subd. (a)(3)(A)-(C).)

This bill provides that good cause for exceeding the presumptive deadlines above includes all of the following:

- If a prosecutor or defense counsel is ill and the anticipated recovery period is shorter than the time it would take for a replacement to prepare for trial;
- If a witness is unavailable after the requesting party has exercised due diligence to obtain the attendance of the witness at trial;
- If a prosecutor, defense counsel, defendant, or a witness is subject to a quarantine preventing their attendance at trial; or
- If there are insufficient courtrooms, courtroom staff, or judges to handle the volume of cases reaching the presumptive deadlines following a judicial emergency or due to an effort to comply with practices suggested by a state, local, or federal health official or guideline.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Current state and federal law bestows a criminal defendant with the right to a speedy and fair trial. Consequently, certain statutory trial deadlines have been prescribed and must be met to continue with a trial unless there is good cause to exceed those deadlines. Currently, there is no statutory clarity as to what constitutes good cause.

California is in the midst of a decades long statewide judgeship shortage. More than 1,500 felony and misdemeanor cases have been dismissed in Riverside County alone since October of 2022 due to strained judicial capacity. The additional backlog in Riverside County cases has surpassed 2,200. Moreover, the recent COVID-19 pandemic and its enduring protocols have further strained the system without any adjustment to statutory judicial procedure.

2. Speedy Trial Rights

Generally, the U.S. and State Constitutions and the California state law provide for the right to a speedy trial. (U.S. Const., amend VI; Cal. Const., Art. I, sec. 15; Pen. Code, § 1382.) The right to a speedy trial is “an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.” (*United States v. Ewell* (1966) 383 U.S. 116, 120.)

Statutorily the speedy trial time frame has been determined to be 60 days for a felony trial and either 30 or 45 days for a misdemeanor trial. Failure to bring a case to trial within the statutory speedy trial deadline will result in dismissal, unless defendant has entered a general time waiver or the defendant has consented to the extension, or if good cause is shown.

The general time waiver entitles the superior court "to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial." (Pen. Code, § 1382, subd. (a)(2)(A), (a)(3)(A).) If the defendant, after proper notice to all parties, later withdraws the waiver in the superior court, the defendant must be brought to trial within 60 days of the date of that withdrawal. (*Ibid.*) If the defendant requests or consents to a trial date beyond the statutory deadline, the defendant must be brought to trial on the agreed-upon date or within 10-calendar days thereafter. (Pen. Code, § 1382, subd. (a)(2)(B), (a)(3)(B).)

A showing of good cause for the delay will also avoid the dismissal of a case. What constitutes good cause for delay depends on the circumstances of each case. This bill specifies that the following circumstances qualify as good cause:

- If a prosecutor or defense counsel is ill and the anticipated recovery period is shorter than the time it would take for a replacement to prepare for trial;
- If a witness is unavailable after the requesting party has exercised due diligence to obtain the attendance of the witness at trial;
- If a prosecutor, defense counsel, defendant, or a witness is subject to a quarantine preventing their attendance at trial; or
- If there are insufficient courtrooms, courtroom staff, or judges to handle the volume of cases reaching the presumptive deadlines following a judicial emergency or due to an effort to comply with practices suggested by a state, local, or federal health official or guideline.

3. Relevant Case Law on Good Cause

Penal Code section 1382 does not define good cause but several factors are relevant in making a determination: “(1) the nature and strength of the justification for the delay, (2) the duration of

the delay, and (3) the prejudice to either the defendant or the prosecution that is likely to result from the delay. In making its good-cause determination, a trial court must consider all of the relevant circumstances of the particular case, applying principles of common sense to the totality of the circumstances.” (*People v. Engram* (2010) 50 Cal.4th 1131, 1163.)

What constitutes good cause is a matter that lies within the discretion of the trial court. (*People v. Bilbrey* (2018) 25 Cal.App. 5th 764, 780.) A blanket rule that certain statutory circumstances qualify as good cause is contrary to long-standing case law.

Illness and Quarantine

Generally, delays attributable to the defendant or counsel and that are not attributable to the state can constitute good cause. Illness of defense counsel may constitute good cause for delay of trial. (*People v. Crovedi* (1966) 65 Cal.2d 199.) Whether the illness rises to the level of good cause is a factual issue and would depend on whether the person is incapacitated (e.g., a heart attack versus generally not feeling well). When defense counsel cannot come to court due to illness, the court may continue the case to when counsel can return or for a reasonable time to obtain new counsel. (*Ibid.*) If obtaining new counsel, that counsel must also be given reasonable time to prepare before trial.

A defendant’s illness may also constitute good cause to delay trial beyond the statutory timelines. The court has found that good cause for the delay of trial exists when defendant is under quarantine to prevent the spread of infectious disease. (*People v. Tucker* (2011) 196 Cal.App.4th 1313, 1314.)

As for prosecution, generally, delay attributable to the state does not constitute good cause. (*Bilbrey, supra*, at p. 781.) However, “delay arising from unforeseen circumstances, such as unexpected illness or unavailability of counsel or witnesses constitutes good cause to avoid dismissal.” (*Ibid.*)

Unavailable Witnesses

The unavailability of a witness may also constitute good cause, however a particularized showing is required. In seeking a continuance to obtain the presence of a witness, “the moving party has the burden of showing that the following legal criteria have been satisfied: (1) That the movant has exercised due diligence in an attempt to secure the attendance of the witness at the trial by legal means; (2) that the expected testimony is material; (3) that it is not merely cumulative; (4) that it can be obtained within a reasonable time; and (5) that the facts to which the witness will testify cannot otherwise be proven.” (*Owens v. Superior Court of Los Angeles County* (1980) 28 Cal.3d 238, 250-251.) Mere showing of unavailability of a witness is not sufficient to establish good cause for delay.

Courtroom or Judge Availability

In general, delay due to the failure of the state to provide enough courtrooms or judges to enable the defendant to come to trial within the statutory deadline does not constitute good cause. (*Engram, supra*, p. 1163 citing *People v. Johnson* (1980) 26 Cal.3d 557, 571.) In *Engram*, the defendant was tried for murder and burglary. He was acquitted of the murder charge but found guilty of the burglary charge. On appeal, the appellate court reversed the conviction and ordered a new trial due to prejudicial instructional error on the burglary charge. The defendant was tried

again and the jury was unable to agree on the verdict thus leading to a mistrial. The prosecution moved for a third trial and on the last day of the applicable timeframe and after several more continuances, defendant's counsel filed a motion for dismissal pursuant to Penal Code section 1382. The prosecution objected to the motion for dismissal based on lack of a courtroom and asking to use courtrooms devoted to juvenile, probate, and family law matters. The court declined to do so noting that Riverside County Superior Court had already devoted virtually all of its resources—superior court judges and courtrooms—ordinarily intended for the trial of civil cases instead to the trial of criminal cases and dismissed the case due to the inability of the state to timely try the case. The prosecutor appealed the dismissal.

On appeal, the court found that the trial court considered every possible option, including assigning the case to special proceeding courtrooms, and concluded that in the interests of justice dismissal of the case was appropriate. (*Engram, supra*, at p. 1145.) The court reasoned that the state has the obligation to provide sufficient resources to dispose of the usual court business promptly, court congestion will not constitute good cause unless the circumstances are exceptional. The court explained that the record made clear that here the lack of an available courtroom was the result of a chronic condition which was evidenced by a task force report on criminal backlogs in Riverside county showing that nearly 25 percent of jail inmates had been awaiting trial for more than one year. One hundred seventy-seven inmates had been awaiting trial for more than two years, 32 inmates were awaiting trial for more than four years, and in one case the delay was 8 years. (*Engram, supra*, at p. 1136.) This was not an unusual, nonrecurring event warranting a finding of good cause. (*Engram, supra*, at p. 1145.)

As discussed above, courts have distinguished between chronic routine congestion of a court's trial docket, which does not amount to good cause, as opposed to exceptional circumstances such as the COVID-19 pandemic that may justify the delay. (*Engram, supra*, at p. 1163; *Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108.)

4. Argument in Support

According to The Riverside County District Attorney's Office:

Since covid based emergency orders covering the Superior Court in Riverside expired, the judges of that court have exercised their discretion to decline to apply case law holding that congesting caused at least in part by the pandemic and its attendant fallout is good cause for exceeding the presumptive due dates because the pandemic was an exceptional and unique nonrecurring event for which the state should not be blamed. Instead, they have chosen to blame their congested calendar of this Legislature's failure to provide their court with additional judges. This is even after the Legislature provided additional resources to the Judicial Branch to help meet the challenges of the pandemic and its fallout. This included providing Riverside court with four additional judges last budget cycle as well as more funding than it has ever had. The judges of the Riverside Superior Court do this by distinguishing the local situation from the situations discussed in the multiple pandemic-era section 1382 cases and by asserting that the holdings in those cases do not make an applicable rule that good cause exists as a matter of law.

In our local court, judges have also entertained arguments about the sufficiency of illness. In one situation, the court pressured an obviously still-ill prosecutor to

come into a congested courtroom and conduct a trial, because – though she could barely speak – she, unlike her spouse, had not tested positive for Covid. That judge was being pushed by defense counsel to not find the illness to constitute good cause warranting a short delay and instead dismiss the case as part of the wholesale dismissals due to congestion upon the expiration of emergency orders.

5. Argument in Opposition

According to Legal Services for Prisoners with Children:

SB 453 would carve huge loopholes into the right to a speedy trial—the most basic constitutional protection for people accused of a crime. It would let prosecutors delay trials whenever the delay occurs “*following*” an emergency—even if the shortage is due to a longstanding trial backlog that is wholly unrelated to the emergency. That would abolish California’s rule that “chronic congestion” is not good cause for missing trial deadlines, and violate the constitutional principle that overcrowded courts do not justify trial delays.

SB 453 would also allow prosecutors to delay trials by pointing to the unavailability of *any* witness. Under current law, in order to justify a delay, prosecutors must show that a witness’s testimony is material, not cumulative, available in a reasonable time, and that the facts which the witness will testify to could not otherwise be proven. SB 453 would eliminate these safeguards, so that in a serious trial with dozens of witnesses, the prosecutor would almost always be able to obtain a delay by finding one person who is unavailable. And because SB 453 includes no limit on the number of times these excuses can be invoked, or how long a delay can last, people charged with crimes could be forced in jail to wait for years past their trial deadline.

These loopholes would feed a growing crisis in our criminal legal system. In recent years, people accused of crimes have been held in jail for months and years without trial as judges repeatedly cite COVID-19 to avoid dismissal. With no trial deadlines, prosecutors have little incentive to resolve cases, because they know that people will likely crack under the pressure of lengthy incarceration and plead guilty to whatever charge is offered.

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